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No. 512-527

Court of Appeals

STATE OF NEW YORK.

EUGENE T. SINGER,
Plaintiff-Respondent-Appellant,

against

THE YOKOHAMA SPECIE BANK, LTD.,
Defendant,

and

ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendant-Appellant-Respondent.

CASE ON APPEAL.

EDWARD FELDMAN,
Attorney for Defendant-Appellant-Respondent, Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
80 Spring Street,
Borough of Manhattan,
New York, N. Y.

CRAVATH, SWAINE & MOORE,
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Borough of Manhattan,
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346 Fanfold Press Inc., 27 Thames St., New York 6, N. Y., U. S. A.

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Supreme Court of the State of New York

APPELLATE DIVISION—FIRST DEPARTMENT.

EUGENE T. SINGER,
Plaintiff-Respondent-Appellant,

against

THE YOKOHAMA SPECIE BANK, LTD.,
Defendant,

and

ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendant-Appellant-Respondent.

Statement Under Rule 234.

This is an appeal by the defendant Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd. from a judgment of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York on March 15, 1947 in accordance with a decision after trial before Mr. Justice Lloyd Church sitting without a jury. The said judgment adjudicated that (1) plaintiff recover judgment against Elliott V. Bell, as Superintendent of Banks, etc., in the sum of $557,561.25 together with interest thereon from October 29, 1942 amounting to the sum of $146,229.62 and costs

4 *Statement Under Rule 234.*

of $141.10 aggregating in all the sum of $703,981.97 and that (2) plaintiff's claim be preferred in the liquidation of the assets in New York of Yokohama Specie Bank, Ltd. pursuant to Section 606(4) of the Banking Law as a creditor of Yokohama Specie Bank, Ltd., whose claim arose out of a transaction with the New York Agency.

By cross appeal, plaintiff has appealed from that part of the judgment which failed to include interest on the sum of $557,561.25 from January 14, 1942 to October 29, 1942.

5 The action was commenced by the service of a summons and complaint upon the Superintendent of Banks on August 10, 1943, who joined issue by the service of his answer on September 28, 1943.

Plaintiff also served on August 10, 1943 the Superintendent of Banks with a copy of the summons and complaint as statutory agent for the defendant, Yokohama Specie Bank, Ltd., the foreign corporation. The Superintendent of Banks did not forward a copy of the summons and complaint to any officer of the defendant Yokohama Specie Bank, Ltd. due to the existence of a state of war,

6 but did send a copy thereof to the Alien Property Custodian at Washington, D. C. No appearance or answer has been interposed by or on behalf of the defendant Yokohama Specie Bank, Ltd. The action against said defendant has been severed and stayed by orders of the Supreme Court, New York County, dated March 13, 1944 and April 19, 1944.

The description of the defendant Elliott V. Bell in the summons and pleadings was modified by order of the Supreme Court, New York County, dated July 30, 1946 without prejudice to any of the proceedings, so as to read: "Elliott V. Bell

Statement Under Rule 234.

as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd." in place of "Elliott V. Bell as Superintendent of Banks of the State of New York".

Plaintiff-respondent-appellant originally appeared by Cravath, de Gersdorff, Swaine & Wood, Esqs. as his attorneys and on March 1, 1944, the name of said firm was changed to Cravath, Swaine & Moore, Esqs.

Defendant-appellant-respondent appears herein by Edward Feldman, Esq. as his attorney.

There has been no change of parties or attorneys except as above stated.

10 **Notice of Appeal of Defendant Elliott V. Bell, as Superintendent of Banks.**

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

EUGENE T. SINGER,
Plaintiff,

against

THE YOKOHAMA SPECIE BANK, LTD. and ELLIOT V. BELL, as Superintend-
11 ent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendants.

Index 1320—1944

Sirs:

PLEASE TAKE NOTICE that the defendant in the above entitled action, Elliott V. Bell, as Superintendent of Banks of the State of New York, as
12 liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd. hereby appeals to the Appellate Division of the Supreme Court, First Department, from the judgment in said action of the Supreme Court, New York County (Mr. Justice Lloyd Church presiding), dated March 13, 1947 and entered and filed in the office of the Clerk of the County of New York on the 15th day of March, 1947, which adjudged (1) that plaintiff is a creditor of Yokohama Specie Bank, Ltd., whose claim arose out of a transaction with its New York Agency and his claim is entitled to preference against the assets in New York of the Yokohama Specie Bank, Ltd., pursuant to the provisions of Section 606, Subdivi-

sion 4(a) of the Banking Law of the State of New York; and (2) that plaintiff recover of the defendant Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of the Yokohama Specie Bank, Ltd., the sum of $557,561.25, together with interest of $146,279.62 and costs and disbursements of $141.10 amounting in the aggregate to the sum of $703,981.97; and this appeal is taken from the whole of said judgment and from each and every part thereof.

Dated: New York, N. Y., April 7, 1947.

Yours, etc.,

EDWARD FELDMAN,
Attorney for defendant, Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Office and P. O. Address,
80 Spring Street,
Borough of Manhattan,
City of New York.

To:

CRAVATH, SWAINE & MOORE, Esqs.,
Attorneys for Plaintiff,
Office and P. O. Address,
15 Broad Street,
Borough of Manhattan,
City of New York.

To:

ARCHIBALD R. WATSON, Esq.,
Clerk of the County of New York.

16

Notice of Appeal of Plaintiff.

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

EUGENE T. SINGER,

Plaintiff,

17 *against*

THE YOKOHAMA SPECIE BANK, LTD. and ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,

Defendants.

Index No. 1320—1944.

18

Sirs:

PLEASE TAKE NOTICE that the plaintiff hereby appeals to the Appellate Division of the Supreme Court, First Judicial Department, from the judgment entered herein in the office of the Clerk of the County of New York on March 15, 1947, insofar as said judgment failed to include interest

on the sum of $557,561.25 from January 14, 1942 to October 29, 1942.

April 14, 1947.

Yours, etc.,

CRAVATH, SWAINE & MOORE,
Attorneys for Plaintiff,
15 Broad Street,
New York, N. Y.

To:

EDWARD FELDMAN, Esq.,
Attorney for Defendant, Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
80 Spring Street,
New York, N. Y.

CLERK OF THE ABOVE-NAMED COURT.

22

Summons.

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

Plaintiff designates New York County, as the place of trial.

EUGENE T. SINGER,
Plaintiff,

23 *against*

THE YOKOHAMA SPECIE BANK, LIMITED and ELLIOTT V. BELL as Superintendent of Banks of the State of New York,
Defendants.

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this
24 summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this Summons, exclusive of the day of service. In case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated August 10, 1943.

CRAVATH, DE GERSDORFF, SWAINE & WOOD,
Attorneys for Plaintiff,
Office and Post Office Address:
15 Broad Street,
New York, N. Y.

Complaint.

[Same Title.]

Plaintiff by his attorneys, Cravath, de Gersdorff, Swaine & Wood, for his complaint herein, alleges, upon information and belief:

1. Standard-Vacuum Oil Company (hereinafter called Standard) is, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Delaware.

2. Defendant, The Yokohama Specie Bank, Limited (hereinafter called Yokohama Specie) is, and at all times hereinafter mentioned was, a banking corporation organized and existing under and by virtue of the laws of the Empire of Japan, having its principal office at Yokohama, Japan, and licensed to do business in the State of New York pursuant to the provisions of the Banking Law of said State (hereinafter called the Banking Law). Prior to December 8, 1941, Yokohama Specie maintained an office (hereinafter called the New York Agency) for the transaction of, and transacted, business in New York, N. Y.

3. Defendant Elliott V. Bell is, and he or his predecessors were at all times hereinafter mentioned, Superintendent of Banks of the State of New York (hereinafter called Superintendent).

4. Standard, prior to December 7, 1941, had for several years maintained deposit accounts with Yokohama Specie in Yokohama, Japan.

28 *Complaint.*

5. Prior to August, 1941, it had been the practice of Standard to purchase dollars from Yokohama Specie for delivery to Standard in New York by the New York Agency, by payment of Japanese Yen to Yokohama Specie in Japan.

6. On April 10, 1940, the President of the United States issued Executive Order No. 8389, pursuant to the Trading with the Enemy Act, requiring that all transactions in foreign exchange by any person within the United States be specifically authorized by the Secretary of the Treasury of the United States (hereinafter called the Secretary of the Treasury) by license or otherwise, if such transactions were by or on behalf of or pursuant to direction of any foreign country designated in said order, or any national thereof. By Executive Order No. 8832, dated July 26, 1941, the aforesaid order was amended so as to include Japan and its nationals.

29

7. On or about August 27, 1941, Standard paid ¥2,378,928 to Yokohama Specie in Yokohama, with instructions to Yokohama Specie to pay $557,561.25 to Standard in New York City.

30

8. On August 29, 1941, Standard was advised by the New York Agency that said Agency had received instructions from Yokohama Specie to pay to Standard in New York City said $557,561.25 and that the Agency would pay said amount to Standard out of the funds which the Agency had on deposit with Guaranty Trust Company of New York, immediately upon the granting of a license

by the Secretary of the Treasury permitting such payment.

9. Standard on August 29, 1941, applied to the Secretary of the Treasury for a license permitting the New York Agency to pay and Standard to receive $557,561.25.

10. On numerous occasions between August 29, 1941, and December 8, 1941, the New York Agency inquired of Standard whether the license had been procured from the Secretary of the Treasury and advised Standard that it had $557,561.25 available for payment to Standard and that it was ready and willing to pay over said sum to Standard as soon as the Secretary of the Treasury issued a license permitting it to do so.

11. A credit in the amount of $557,561.25 was established by the New York Agency for the benefit of Standard and Standard appears as a creditor on the books of said Agency.

12. On December 7, 1941, Japan attacked the United States and on December 8, 1941, the United States Congress declared that a state of war existed between the United States and Japan.

13. On December 8, 1941, pursuant to the Banking Law, the Superintendent took possession of the business and property of Yokohama Specie in the State of New York.

14. On January 14, 1942, the Secretary of the Treasury issued a license to the Superintendent

permitting him to liquidate the assets, property and business in the State of New York of Yokohama Specie, in accordance with the laws of said State.

15. On August 25, 1942, the Superintendent issued a notice pursuant to the Banking Law, requiring all persons having claims against Yokohama Specie to file proof of such claims with the Superintendent on or before November 23, 1942.

16. Pursuant to said notice Standard, on November 21, 1942, duly filed written proof of its claim above described with the Superintendent and demanded therein priority of payment thereof by the Superintendent.

17. More than eighty days have elapsed since the expiration, on November 23, 1942, of the time for filing such claims against Yokohama Specie with the Superintendent and the claim duly filed in writing by Standard on November 21, 1942, was rejected by the Superintendent on February 11, 1943.

18. No part of said $557,561.25 has been paid by Yokohama Specie, its said New York Agency or the Superintendent to Standard or to plaintiff.

19. Prior to the commencement of this action, Standard duly assigned to plaintiff all right, title and interest which said Company might have in and to the claim herein set forth.

WHEREFORE, plaintiff demands judgment:

(1) Against Yokohama Specie for the sum of $557,561.25 with interest;

(2) Against the Superintendent directing him to accept Standard's claim in the amount of $557,561.25, with interest, and to pay said claim out of the funds and assets of Yokohama Specie in the possession of the Superintendent;

(3) That plaintiff is entitled to have said judgment satisfied out of the assets in this state of Yokohama Specie;

(4) For the costs and disbursements of this action;

(5) For such other, further and different relief as to this Court may seem just and proper.

CRAVATH, DE GERSDORFF, SWAINE & WOOD,
Attorneys for Plaintiff,
15 Broad Street,
New York, N. Y.

(Verified by Eugene T. Singer, August 10, 1943.)

40 **Answer.**

[Same Title].

Defendant Elliott V. Bell, as Superintendent of Banks of the State of New York and defendant The Yokohama Specie Bank, Ltd., New York Agency, in Liquidation, insofar as it may be sued herein as "The Yokohama Specie Bank, Limited" by Edward Feldman, their attorney, answering the complaint herein:

41 1. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint marked "1", "4", "5", "7", "9" and "19".

2. Deny each and every allegation contained in the paragraph of the complaint marked "8", except admit that Standard was advised by the New York Agency by letter dated August 29, 1941 that said Agency had received instructions from The Yokohama Specie Bank, Ltd., Yokohama, Japan, to pay to Standard in New York City the sum of $557,561.25. A true and exact copy of
42 said letter written by The Yokohama Specie Bank, Ltd., New York Agency, to Standard and dated August 29, 1941, is annexed hereto and made a part hereof and marked Exhibit "1".

3. Deny each and every allegation contained in the paragraphs of the complaint marked "10" and "11".

4. Admit that on or about the 21st day of November, 1942, Standard filed a document designated as a "proof of claim" with the Superintendent of Banks in connection with the liquida-

tion of the business and property in New York of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, but except as so admitted, denies each and every allegation contained in the paragraph of the complaint marked "16".

5. Admit that on or about February 11, 1943, the document filed by Standard and denominated as a "proof of claim" was rejected by the Superintendent of Banks, and admit that more than eighty (80) days have elapsed since the expiration 44
of the time for filing claims with the Superintendent of Banks, but except as so admitted, deny each and every allegation set forth in the paragraph of the complaint marked "17".

6. Admit that The Yokohama Specie Bank, Ltd., New York Agency, and the Superintendent of Banks have not paid $557,561.25 to Standard or to the plaintiff, but except as so admitted deny any knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the complaint marked "18". 45

As and for a First, Separate and Complete Defense to the Complaint Herein, Defendants Elliott V. Bell, as Superintendent of Banks of the State of New York and The Yokohama Specie Bank, Ltd., New York Agency, in Liquidation, Insofar as it May Be Sued Herein as "The Yokohama Specie Bank, Limited", Allege:

7. That at all the times hereinafter mentioned The Yokohama Specie Bank, Ltd. was and still

46 *Answer.*

is a banking corporation duly incorporated under the laws of the Empire of Japan and was prior to December 8, 1941, duly licensed by the Superintendent of Banks to transact a limited banking business in the State of New York and maintained an agency for the transaction of such business in the State of New York.

8. On the 8th day of December, 1941, pursuant to Section 606 of the Banking Law of the State of New York, the Superintendent of Banks of the
47 State of New York duly took possession of the business and property of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, for the purpose of liquidating the same as provided in the Banking Law of the State of New York, and is still engaged in said liquidation.

9. Pursuant to the provisions of the Banking Law of the State of New York and more particularly the provisions of Section 606 Subdivision 4 thereof, the only claims which may be paid out of the assets in New York of The Yokohama Specie
48 Bank, Ltd., including the New York Agency thereof are (1) claims arising out of transactions had with the New York Agency, and (2) claims of persons whose names appear as creditors on the books of such New York Agency, and no other claimants are entitled to share and participate in the assets in New York of The Yokohama Specie Bank, Ltd., including its New York Agency.

10. Pursuant to the authority of the "Trading with the Enemy Act" as amended, and Executive Order No. 9095 as amended, the Alien Property

Custodian, by Supervisory Order No. 27, undertook the supervision of the liquidation of the assets, property and business in the State of New York of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, and authorized the Superintendent of Banks to retain possession of and liquidate the assets, property and business in the State of New York of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, and in the course of such liquidation to do such acts and perform such duties as may be required of or permitted to said 50 Superintendent of Banks by and in accordance with and subject to the provisions of the Banking Law of the State of New York.

11. Pursuant to the Authority of the "Trading with the Enemy Act" and Executive Order No. 9095 as amended, the Alien Property Custodian by Vesting Order No. 915 dated the 15th day of February, 1943, has vested in the interest of the United States of America, the excess proceeds of the business and property in the State of New York of The Yokohama Specie Bank, Ltd., 51 in the possession of the Superintendent of Banks of the State of New York remaining after payment of claims described in paragraph "9" of this Answer.

12. The plaintiff's name does not appear as a creditor on the books of the New York Agency of The Yokohama Specie Bank, Ltd., and the claim of the plaintiff does not arise out of any transaction had by the plaintiff with the New York Agency of The Yokohama Specie Bank, Ltd., within the meaning of the provisions of the Bank-

52 *Answer.*

ing Law and more particularly within the meaning of the provisions of Section 606, Subdivision 4.

13. The plaintiff is not entitled to share as a claimant in the New York assets of The Yokohama Specie Bank, Ltd., including the New York Agency thereof.

As and for a Second, Separate and Complete Defense to the Complaint Herein, Defendants Elliott V. Bell, as Superintendent
53 *of Banks of the State of New York and the Yokohama Specie Bank, Ltd., New York Agency, in Liquidation, Insofar as It may be Sued Herein as "The Yokohama Specie Bank, Limited", Allege:*

14. Repeat and reiterate each and every allegation contained in the paragraphs of this answer marked "7", "8", "9", "10", "11", "12" and "13" with the same force and effect as if the same were hereinafter set forth at length.

54 15. On December 8, 1941 a state of war was declared to exist between the United States of America and the Empire of Japan.

16. Upon information and belief, and by reason of the declaration of a state of war between the Empire of Japan and the United States of America, the telegraphic instructions received by The Yokohama Specie Bank, Ltd., New York Agency from The Yokohama Specie Bank, Ltd., Yokohama, Japan and referred to in paragraph "2" of the answer herein were rescinded, cancelled, revoked and annulled.

Answer.

As and for a Third, Separate and Complete Defense to the Complaint Herein, Defendants Elliott V. Bell, as Superintendent of Banks of the State of New York and The Yokohama Specie Bank, Ltd., New York Agency, in Liquidation, Insofar as It May Be Sued Herein as "The Yokohama Specie Bank, Limited", Allege:

17. Repeat and reiterate each and every allegation contained in the paragraphs of this answer marked "7", "8", "9", "10", "11", "12" and "13" with the same force and effect as if the same were hereinafter set forth at length.

18. That pursuant to Section 5(b) of the Act of Congress of October 6, 1917 known as the "Trading with the Enemy Act" and Executive Order No. 8389, as amended, issued by the President of the United States pursuant thereto, and pursuant to all the other statutes and orders in such case made and provided and applicable hereto, The Yokohama Specie Bank, Ltd., New York Agency was at all times after the 26th day of July, 1941, and still is prohibited from performing any acts and making any payment to the plaintiff with respect to the alleged telegraphic instructions pleaded in the complaint unless specifically authorized by the Secretary of the Treasury of the United States of America; upon information and belief no such authorization or license was granted by the Secretary of the Treasury and furnished by the plaintiff to the New York Agency of The Yokohama Specie Bank, Ltd. at any time prior to the 8th day of December, 1941, the date

58 *Answer.*

when the Superintendent of Banks of the State of New York suspended the operations of said Agency and took possession of its business, assets and affairs for the purposes of liquidation.

19. That pursuant to Section 5(b) of the Act of Congress of October 6, 1917, known as the "Trading with the Enemy Act" and Executive Order No. 8389, as amended, issued by the President of the United States pursuant thereto, and pursuant to all the other statutes and orders in
59 such case made and provided and applicable thereto, The Yokohama Specie Bank, Ltd., New York Agency was at all times from the 26th day of July, 1941 to December 8, 1941 and still is prohibited from making any delivery or payment to, or engaging in any foreign exchange transaction with the plaintiff, or with anyone on its behalf unless specifically authorized by the Secretary of the Treasury. Upon information and belief, no such authorization was obtained by or on behalf of the plaintiff, nor did the plaintiff ever apply for or obtain and deliver to The Yokohama Specie
60 Bank, Ltd., New York Agency such authorization, consent and license.

20. That no liability against the New York Agency of The Yokohama Specie Bank, Ltd. would ever accrue until the plaintiff or his assigns obtained from the Secretary of the Treasury of the United States of America a license and authorization permitting The Yokohama Specie Bank, Ltd., New York Agency to make payment under and pursuant to the alleged telegraphic instructions received by The Yokohama Specie Bank, Ltd.,

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New York Agency from The Yokohama Specie Bank, Ltd., Yokohama, Japan.

21. That by reason of the aforementioned facts, the claim of the plaintiff, if any, was uncertain and contingent on the 8th day of December, 1941, the 23rd day of November, 1942, the 11th day of August, 1943 and at the time of the commencement of the action herein; and that at all of the abovementioned times and at the present time it is and was uncertain and contingent whether said license would ever be granted; that the plaintiff's 62
claim as set forth in the complaint herein is contingent and uncertain and cannot be definitely ascertained so as to constitute a liability against The Yokohama Specie Bank, Ltd., New York Agency in Liquidation.

22. That no part of the moneys claimed in the complaint herein was due and payable on December 8th, 1941, November 23, 1942, August 11, 1943, or on the date of the commencement of this action.

23. That no part of the plaintiff's alleged claim 63
was in existence on December 8th, 1941, November 23, 1942, August 11, 1943, or on the date of the commencement of this action, and it was not known and could not be known or ascertained at any of said dates or times whether the plaintiff's alleged claim would ever come into existence and/or mature, nor was it known nor could it be ascertained at any of such dates or times what the amount of such claim would be.

WHEREFORE, defendants Elliott V. Bell, as Superintendent of Banks of the State of New

Answer.

York and defendant The Yokohama Specie Bank, Ltd., New York Agency, in Liquidation, insofar as it may be sued herein as "The Yokohama Specie Bank, Limited," demand judgment dismissing the complaint, together with the costs and disbursements of this action.

EDWARD FELDMAN,
Attorney for Defendant.

ELLIOTT V. BELL,
As Superintendent of Banks of the State of New York and The Yokohama Specie Bank, Ltd., New York Agency, in Liquidation, insofar as it may be sued herein as "The Yokohama Specie Bank, Limited,"
Office & P. O. Address,
526 Broadway,
Borough of Manhattan, No. 12,
City of New York.

(Verified by Charles R. Murray, Special Deputy Superintendent of Banks on September 25, 1943).

Exhibit 1, Annexed to Answer. 67

August 29th, 1941.

Standard Vacuum Oil Company
10 Broadway
New York City
New York.

Gentlemen: Att: Mr. Mitbo: 68

Referring to our telephone conversation of today, we wish to advise you that we have received telegraphic instructions from our Yokohama Office to pay you the sum of $557,561.25.

We understand that you are filing an application with The Treasury Department of the U. S. A. for a License in order to permit us to make this payment to you.

Awaiting your reply regarding this matter, we remain, 69

Yours very truly,

THE YOKOHAMA SPECIE BANK, LTD.

S. ARAKI
p. p. Agent

70 **Notice to Amend Answer.**

(Granted Record, p. 161)

[Same Title.]

Sirs:

Please take notice that at the trial of the above entitled action, the defendant, the Superintendent of Banks of the State of New York, as Liquidator, will move to amend his answer so as to allege the following:

71 *As and for a Fourth Separate and Complete Defense.*

24. Upon information and belief that pursuant to the provisions of Executive Order No. 8389 as amended, Standard Vacuum Oil Company on or about August 29, 1941, filed with the Federal Reserve Bank, Foreign Funds Control, its application bearing serial number SV-70 for a Treasury license authorizing the Yokohama Specie Bank, New York Agency to debit, in the sum of $557,561.25, the account of the Yokohama office
72 maintained with it and to pay the sum of $557,561.25 to Standard Vacuum Oil Company in accordance with cable instructions received on August 29, 1941 by the New York Agency of Yokohama Specie Bank, Limited from the branch of the said bank located at Yokohama.

25. Upon information and belief that on or about December 29, 1941, Standard Vacuum Oil Company filed with the Federal Reserve Bank, Foreign Funds Control, an additional application bearing serial number SV-245 for the same relief referred to in Paragraph 24 hereof.

Notice to Amend Answer.

26. Upon information and belief that on or about January 13, 1942, the Treasury Department duly denied the aforesaid application bearing serial number SV-245 and Standard Vacuum Oil Company was duly notified thereof on or about January 13, 1942.

27. Upon information and belief that on or about January 14, 1942, the Treasury Department duly denied the aforesaid application bearing serial number SV-70 and Standard Vacuum Oil Company was duly notified thereof on or about January 14, 1942.

Dated: New York, N. Y., September 18, 1946.

Yours, etc.,

EDWARD FELDMAN,
Attorney for Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in New York of Yokohama Specie Bank, Limited,
Office and P. O. Address,
80 Spring Street,
Borough of Manhattan,
City of New York (12).

To:

CRAVATH, SWAINE & MOORE, Esqs.,
Attorneys for Plaintiff,
Office and P. O. Address,
15 Broad Street,
Borough of Manhattan,
City of New York (5).

76 **Defendant's Demand for Bill of Particulars.**

[Same Title.]

Sirs:

Please take notice that, you are required to serve upon the undersigned a verified Bill of Particulars setting forth the following:

1. With respect to paragraph "8":

(a) State whether it is claimed the alleged advice by the New York Agency to Standard
77 is claimed to be in writing or oral or both. If in writing, set forth a true copy thereof; if oral, set forth all the terms and conditions thereof.

(b) State who, acting on behalf of the New York Agency, it is claimed gave the advice.

(c) Set forth whether or not it is claimed the alleged promise to pay by the New York Agency was in writing or oral. If in writing, set forth a true copy thereof. If oral, set forth all the terms and conditions thereof.

78 (d) State when it is claimed that the alleged promise to pay on the part of the New York Agency was made.

(e) State the name of the person who, acting on behalf of the New York Agency, it is claimed made the alleged promise.

(f) State to whom, acting on behalf of Standard, it is claimed the alleged promise to pay was given.

Defendant's Demand for Bill of Particulars. 79

2. With respect to paragraph "[illegible]":

(a) Set forth under what facts it is claimed a credit was established in the sum of $557,561.25 by the New York Agency for the benefit of Standard.

(b) Set forth upon what books of the New York Agency it is claimed Standard appears as a creditor.

Yours, etc., 80

EDWARD FELDMAN,
Attorney for The Yokohama Specie Bank, Limited and Elliott V. Bell, as Superintendent of Banks of the State of New York,
Office and P. O. Address,
80 Spring Street,
New York 12, N. Y.

To:

CRAVATH, SWAINE & MOORE, Esqs.,
Attorneys for Plaintiff, 81
15 Broad Street,
New York, N. Y.

82 **Plaintiff's Bill of Particulars.**

[Same Title.]

Plaintiff, for his bill of particulars pursuant to demand served herein on January 21, 1946, alleges upon information and belief:

1 (a). The advice by the New York Agency to Standard was both written and oral.

On August 29, 1941, the New York Agency orally advised Standard that the Agency had received telegraphic instructions from the Yoko-
83 hama office of Yokohama Specie to make payment to Standard in New York of the sum of $557,561.25, and that it had available the $557,561.25 for payment to Standard out of the funds it had on deposit with Guaranty Trust Company of New York. Standard stated that it was making application to the United States Treasury Department for a license to permit the payment by the New York Agency to Standard. On September 2, 1941, Standard received at its New York office the following confirmatory letter:

84 "The Yokohama Specie Bank, Limited
New York Agency
Equitable Building

New York, August 29, 1941.

Standard Vacuum Oil Company
10 Broadway
New York City
New York.

Gentlemen: Att. Mr. Mitbo:

Referring to our telephone conversation of today, we wish to advise you that we have

received telegraphic instructions from our Yokohama Office to pay you the sum of $557,561.25. 85

We understand that you are filing an application with The Treasury Department of the U. S. A. for a License in order to permit us to make this payment to you.

Awaiting your reply regarding this matter, we remain,

Yours very truly,

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THE YOKOHAMA SPECIE BANK, Ltd.
S. Araki
pp. Agent"

1(b). Gustav Hapke and E. J. Mulligan, acting on behalf of the New York Agency, gave the oral advice to Standard. The written advice, set out above in 1(a), was signed "The Yokohama Specie Bank, Ltd. S. Araki p. p. Agent."

1(c). See 1(a) above.

1(d). See 1(a) above. 87

1(e). See 1(b) above.

1(f). The oral advice was given to Harold Mitbo and E. J. Kenny, acting on behalf of Standard. The written advice was addressed to Standard-Vacuum Oil Company, 10 Broadway, New York City, New York.

2(a)(b). The plaintiff claims that an enforcible legal obligation by the New York Agency of Yokohama Specie to Standard was created by the facts that on August 27, 1941, Standard, through its Yokohama office, delivered to Yoko-

hama Specie, at its Yokohama office, the yen equivalent of $557,561.25 with instructions to pay that dollar amount to Standard in New York; that Yokohama Specie accepted the funds so deposited, and acting under its New York license, cabled instructions to its New York Agency to pay $557,561.25 to Standard in New York; and that the New York Agency of Yokohama Specie on August 29, 1941, communicated with Standard as set forth in 1(a) above. The plaintiff has no knowledge of any book or record of the New York
89 Agency on which Standard appears as a creditor other than the written communications mentioned above.

February 19, 1946.

CRAVATH, SWAINE & MOORE,
Attorneys for Plaintiff,
15 Broad Street,
New York, N. Y.

(Verified by Eugene T. Singer February 19,
90 1946.)

Defendant's Demand for Further Bill of Particulars.

91

[SAME TITLE.]

Sirs:

PLEASE TAKE NOTICE that within ten (10) days from the service of this Demand, you are required to serve on the undersigned a verified Bill of Particulars setting forth the following:

1. With respect to Paragraph 7 of the Complaint:

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(a) State the exact date payment is claimed to have been made by Standard to Yokohama Specie Bank, Yokohama.

(b) State whether it is claimed payment was by cash or by check; if by check set forth a true copy thereof.

(c) State whether the alleged payment was pursuant to any agreement between Standard and Yokohama; if in writing, set forth a true copy of the alleged agreement or agreements; if oral, set forth all the terms and conditions thereof.

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(d) State whether the instructions to Yokohama Specie Bank, Ltd. Yokohama, are claimed to have been oral or in writing; if oral, set forth all terms and conditions; if in writing, set forth a true copy thereof.

2. With respect to Paragraph 10 of the Complaint:

(a) State the exact date and dates between August 29, 1941 and December 8, 1941 when the alleged conversations are claimed to have taken place.

94 *Defendant's Demand for Further Bill of Particulars.*

(b) State the name of the person or persons who, acting on behalf of New York Agency, it is claimed gave the alleged advice.

(c) State to whom, acting on behalf of Standard, it is claimed the alleged advice was given.

(d) Set forth whether it is claimed the alleged advice was oral or in writing; if in writing, set forth a true copy thereof.

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Dated: New York, N. Y., August 2nd, 1946.

Yours, etc.,

EDWARD FELDMAN,
Attorney for Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property in New York of Yokohama Specie Bank, Ltd.,
Office and P. O. Address,
96 80 Spring Street,
Borough of Manhattan,
City of New York.

To:

CRAVATH, SWAINE & MOORE, Esqs.,
Attorneys for Plaintiff,
Office and P. O. Address,
15 Broad Street,
Borough of Manhattan,
City of New York.

Plaintiff's Further Bill of Particulars.

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[Same Title.]

Plaintiff, for his bill of particulars, pursuant to demand dated August 2, 1946, and order of Mr. Justice Greenberg dated September 5, 1946, alleges, upon information and belief:

1. (a) August 29, 1941, Japanese time.

(b) By check. Plaintiff is unable to set forth a true copy of said check for the reason that it was given in Japan and it 98 is not and has not been in plaintiff's possession nor in the possession in New York of plaintiff's assignor.

(c) Payment was pursuant to written forward exchange contracts in usual form. Plaintiff is unable to set forth a true copy thereof because neither said agreement nor copies thereof are or ever have been in plaintiff's possession or in the possession in New York of plaintiff's assignor.

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(d) In writing in accord with general and customary office practice of the Yokohama office of Standard to enclose checks for remittances with a letter of instructions to Yokohama Specie. Plaintiff is unable to set forth a true copy thereof because said instructions were given in Japan and neither said instructions nor copies thereof are or ever have been in plaintiff's possession or in the possession in New York of plaintiff's assignor. If any of the documents or copies thereof

100 *Decision.*

mentioned in (b), (c) and/or (d) above are obtained by plaintiff prior to trial of this action they will be submitted in compliance with said demand.

2. (a) Plaintiff is unable to state the exact dates.

(b) Gustav Hapke.

(c) Harold Midtbo.

101 (d) Oral.

September 16, 1946.

CRAVATH, SWAINE & MOORE,
Attorneys for Plaintiff,
15 Broad Street,
New York 5, N. Y.

(Verified by Eugene T. Singer, September 16, 1946.)

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102 **Decision.**

[SAME TITLE.]

The above-entitled action (the action having been severed against and stayed as to defendant The Yokohama Specie Bank, Limited, by order of this Court entered herein on April 19, 1944), having regularly come on for trial before the undersigned, without a jury, at a Trial Term, Part IV, of this Court on the 24th, 25th, 27th and 30th days of September, 1946, and the allegations and proofs of the respective parties having been heard and

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taken, and upon due consideration thereof, I do hereby find and decide as follows:

FINDINGS OF FACT.

1. Standard-Vacuum Oil Company (hereinafter called Standard) is a corporation organized and existing under the laws of the State of Delaware, having its principal office at New York, N. Y. Prior to December 8, 1941, Standard maintained a branch office at Yokohama, Japan.

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2. Defendant, The Yokohama Specie Bank, Ltd. (hereinafter called Yokohama Specie) is a banking corporation organized and existing under the laws of the Empire of Japan, having its principal office at Yokohama, Japan. Prior to December 8, 1941, Yokohama Specie was licensed to transact a limited banking business in the State of New York, pursuant to the provisions of the New York Banking Law, and it maintained an agency (hereinafter called the New York Agency) for the transaction of, and transacted, such business in New York, New York.

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3. Defendant Ellioft V. Bell is, and he or one of his predecessors was at all times mentioned in the complaint, Superintendent of Banks of the State of New York and will be hereinafter referred to as the Superintendent.

4. On April 10, 1940, the President of the United States issued Executive Order No. 8389 pursuant to the Trading with the Enemy Act (hereinafter sometimes referred to as the "Freezing Order") prohibiting certain transactions with or involving property of foreign countries desig-

nated in such order, or nationals thereof, except as specifically authorized by the Secretary of the Treasury. On July 26, 1941, by Executive Order No. 8832 the aforesaid freezing order was amended so as to include Japan and its nationals.

5. On or about August 29, 1941, Standard, through its Yokohama office, paid Yokohama Specie at Yokohama the yen equivalent to $557,561.25 to be remitted by cable to Standard in New York. The Yokohama office of Yokohama
107 Specie thereupon cabled its New York Agency to pay $557,561.25 to Standard in New York, and subsequently confirmed such cable instructions by letter.

6. Prior to December 8, 1941, the New York Agency had no knowledge of the transactions between Standard in Yokohama and Yokohama Specie, Yokohama, other than that contained in the foregoing cable of August 29, 1941, and the confirmation thereof subsequently received on October 25, 1941.

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7. Upon receipt of such cable instructions by the New York Agency on August 29, 1941, the New York Agency, having in its possession funds of the Yokohama office of Yokohama Specie in excess of $557,561.25 advised Standard in New York both orally and in writing that it had received such instructions. The New York Agency further advised Standard that upon issuance of a license under Executive Order 8389, as amended, authorizing the New York Agency to pay to Standard the sum in question, the New York Agency would make payment from an account maintained by it with Guaranty Trust Company of New York.

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8. No memorandum was made by Mulligan (an employee of the New York Agency) of any of the foregoing conversations. Neither on August 29, 1941, nor any time thereafter prior to the close of the New York Agency did Mulligan have any knowledge of the cable instructions of August 29, 1941, except as furnished to him by Kenney (an employee of Standard) during the course of the foregoing conversations, and the information furnished by him to Kenney in such conversations was given in accordance with his general practice.

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9. No part of said sum of $557,561.25 has been paid by the New York Agency to Standard, but at no time on or after August 29, 1941, did the New York Agency purport to revoke its acceptance of the cable instructions received from the Yokohama office of Yokohama Specie.

10. At no time on August 29, 1941, or thereafter, did the New York Agency or any of its employees or representatives prepare any transfer voucher or make any entries in the Register of Bills and T. T. Payable, or in any book of account or other book or record of the Agency, with respect to the cable instructions of August 29, 1941, hereinabove referred to.

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11. At no time on August 29, 1941, or thereafter, did the New York Agency or any of its agents or employees hold apart, set aside, segregate, appropriate or otherwise earmark any of its funds, assets or accounts for the purpose of paying the sum of $557,561.25 to Standard in New York, nor did it or any of them ever promise or agree with or for the benefit of Standard that

112 it would hold apart, set aside, segregate, appropriate or otherwise earmark any such property for its benefit.

12. At all times herein mentioned an account was maintained on the books of the New York Agency in the name of the Yokohama branch of the bank entitled "Inter-Office A/C—Their A/C," which account reflected the dollar balance between the Yokohama office and the New York Agency, and in which was entered all dollar transactions
113 affecting the Yokohama office. On August 29, 1941, there was a credit balance in such account of $1,634,744.69. This balance became a debit balance on November 17, 1941, on which date it appears that the Yokohama office was debtor to the New York Agency in the sum of $147,678.10. The balance continued as a debit balance after November 17, 1941, and when the New York Agency was taken over by the Superintendent of Banks, it amounted to $333,842.02.

13. In addition to the dollar account above
114 referred to, a yen account in the name of Yokohama office was maintained on the books of the New York Agency. On August 29, 1941, there was a credit balance in this account in favor of the Yokohama office of $23,519.29. Such indebtedness thereafter increased to the sum of $101,545.52 on November 12, 1941. On December 3, 1941, the account indicated that there was no balance due to or from the Yokohama office. No entries were made in the account subsequent to December 3, 1941.

14. The foregoing accounts are the only accounts on the books of the New York Agency

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reflecting balances existing between the New York Agency and the Yokohama office.

15. On August 29, 1941, after the oral conversations hereinabove referred to, Standard in New York filed an application for a Treasury license, which stated in part as follows:

> "Applicant respectfully requests that the license issued pursuant to this Application authorize (1) the Yokohama Specie Bank, New York Agency, to pay the amount of such remittance out of funds such Agency has on deposit with the Guaranty Trust Company of New York, 140 Broadway, New York, New York, and to debit in respect thereof the account maintained on the books of the Yokohama Specie Bank, New York Agency, in the name of the Yokohama Specie Bank, Yokohama, Japan, and (2) the Guaranty Trust Company of New York to make payment to Applicant of said amount and to debit in respect thereof the blocked account maintained on its books in the name of the Yokohama Specie Bank, New York Agency. • • •"

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16. Thereafter, by letter dated October 15, 1941, Federal Reserve Bank notified Standard in New York that its application for a license involved a question of basic policy which was then receiving the active consideration of the Treasury Department and that when a decision thereon had been reached and action taken, Standard would be promptly notified.

17. The application filed by Standard for a license was brought to the attention of Ashwood

(Treasury Department representative assigned to supervise the operations of the Agency) and in accordance with his practice, Ashwood advised the Federal Reserve Bank that, in his opinion, the application should be denied.

18. On December 8, 1941, the United States Congress declared that a state of war existed between the United States and Japan and on the same day the Superintendent took possession of the property in New York of Yokohama Specie.

19. On December 8, 1941, on the outbreak of the war, the Superintendent of Banks took possession of the business and property in New York of the Yokohama Specie Bank, Ltd., including the New York Agency for the purpose of liquidation, and has since continued in such possession, and is now liquidating the same.

20. By letter dated December 19, 1941, the Superintendent of Banks was authorized by the Federal Reserve Bank to effect payments from the blocked accounts of the New York Agency for the purpose of office maintenance and other expenses incidental to the administration of the property of such Agency in anticipation of liquidation.

21. On December 29, 1941, Standard in New York filed with the Secretary of the Treasury a further application for a license to permit the liquidator of the New York Agency to make payment of the sum of $557,561.25, and in that connection stated:

> "In view of the existing state of war between the United States and the Japanese Empire it seems reasonable to assume that un-

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certainties concerning the relations between this country and Japan have ended and that questions of policy covering the payment by Japanese of their debts in the United States have been resolved."

22. By letters dated January 13, 1942 and January 14, 1942, Federal Reserve Bank advised Standard in New York that its license applications dated December 29, 1941 and August 29, 1941, respectively, were "denied in accordance with instructions of the Treasury Department."

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23. On January 14, 1942, Federal Reserve Bank issued a license on behalf of the Secretary of the Treasury to the Superintendent of Banks authorizing him to make payments to depositors and to perform all other acts appropriate to the orderly liquidation of the assets, property and business of the New York Agency, subject to the following stipulation among others:

"2. Transactions involving a blocked national other than the bank in liquidation shall be effected only as authorized by a general or specific license."

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24. On September 28, 1942, the Alien Property Custodian pursuant to the Trading with the Enemy Act and Executive Order No. 9095, as amended, issued and served upon the Superintendent of Banks his Supervisory Order No. 27, whereunder he undertook the supervision to the extent deemed necessary or advisable from time to time by him of the New York Agency and of all property of whatever nature whatsoever owned or

124 controlled by it, without, however, vesting such Agency or any of its property or assets.

25. By letter dated September 28, 1942, the Alien Property Custodian authorized the Superintendent of Banks to retain possession of and liquidate the New York Agency, its property and assets and, in the course thereof, to do such acts and perform such duties as may be required of or permitted to him by and in accordance with and subject to the provisions of the Banking Law of
125 the State of New York. Said letter further required the Superintendent to submit for the approval of the Custodian all claims against the Agency which the Superintendent proposed to accept, together with certain details with respect thereto.

26. By letter dated October 29, 1942, the Federal Reserve Bank advised the Superintendent of Banks that in view of the foregoing Supervisory Order No. 27 issued by the Alien Property Custodian, the Superintendent was authorized by the Treasury Department so far as Executive Order
126 No. 8389, as amended, was concerned, to engage in any transaction on or after October 29, 1942, which might be engaged in without a specific license of the Treasury Department by a person who was not a national of any blocked country. The letter of the Federal Reserve Bank further stated that the license theretofore issued by the Treasury Department dated January 14, 1942, hereinabove referred to, was thereby revoked.

27. On August 25, 1942, the Superintendent issued a notice pursuant to the Banking Law requiring all persons having claims against the Yokohama Specie Bank to file proofs of such

claims with the Superintendent on or before November 23, 1942.

28. On November 21, 1942, Standard filed proof of its claim for the aforesaid $557,561.25 in the liquidation of the business and property in New York of Yokohama Specie with the Superintendent and demanded priority of payment thereof. Said claim was rejected by the Superintendent on February 11, 1943. No part of said claim has been paid by the Superintendent to Standard or to plaintiff. 128

29. Prior to the commencement of this action Standard duly assigned to plaintiff all its right, title and interest in and to its said claim for $557,561.25 against Yokohama Specie, the New York Agency and the Superintendent.

30. On February 15, 1943, the Alien Property Custodian issued Vesting Order No. 915 pursuant to the Trading with the Enemy Act and Executive Order No. 9095, as amended, vesting in himself for the benefit of the United States the excess proceeds of the business and property in New 129 York of The Yokohama Specie Bank, Ltd., in the possession of the Superintendent, including the excess proceeds of all assets of the New York Agency "remaining after the payment of the claims of the creditors, accepted or established in accordance with the Banking Law of the State of New York, arising out of transactions had by them with the New York Agency of said The Yokohama Specie Bank, Ltd., or whose names appear as creditors on the books of such agency, together with interest on such claims and the expenses of liquidation."

130 *Decision.*

31. On April 15, 1944, the claimant herein filed a claim with the Alien Property Custodian for the sum of $557,561.25 based upon a "claim for unpaid telegraphic transfer from Yokohama Specie Bank, Ltd., Yokohama, Japan."

32. Neither the name of Eugene T. Singer nor that of Standard Vacuum Oil Co. appeared on the books or records of the New York Agency on August 29, 1941, or at any time subsequent thereto as a creditor or owner of an account
131 payable.

CONCLUSIONS OF LAW.

1. Plaintiff is a creditor of Yokohama Specie, whose claim arose out of a transaction with the New York Agency and his claim is entitled to preference against the assets in New York of Yokohama Specie Bank, Ltd., pursuant to the provisions of Section 606, subdivision 4(a) of the Banking Law of the State of New York.

2. Plaintiff is entitled to judgment in his favor
132 against the Superintendent, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., in the sum of $557,561.25, with interest from October 29, 1942, and with costs and disbursements of the action.

3. Let judgment be entered accordingly.

LLOYD CHURCH,
Justice of the Supreme Court of the
State of New York.

March 13, 1947.

Plaintiff's Proposed Findings of Fact and Conclusions of Law.

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[Same Title.]

Findings of Fact.

1. Standard-Vacuum Oil Company (hereinafter called Standard) is a corporation organized and existing under the laws of the State of Delaware, having its principal office at New York, N. Y. Prior to December 8, 1941, Standard maintained a branch office at Yokohama, Japan (S. M. 4). [281-3]*

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Found—L. C., J. S. C.

2. Defendant, The Yokohama Specie Bank, Ltd. (hereinafter called Yokohama Specie) is a banking corporation organized and existing under the laws of the Empire of Japan, having its principal office at Yokohama, Japan. Prior to December 8, 1941, Yokohama Specie was licensed to transact a limited banking business in the State of New York, pursuant to the provisions of the New York Banking Law, and it maintained an office (hereinafter called the New York Agency) for the transaction of, and transacted, such business in New York, New York (Complaint, par. 2, admitted Exs. Z, Z-1).

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Found—L. C., J. S. C.

3. Defendant Elliott V. Bell is, and he or one of his predecessors was at all times mentioned in the complaint, Superintendent of Banks of the State of New York and will be hereinafter referred to as the Superintendent (Complaint, par. 3, admitted).

Found—L. C., J. S. C.

4. On or about August 29, 1941, Standard, through its Yokohama office, paid Yokohama Spe-

* Figures in brackets refer to the folio numbers corresponding to the S. M. references.

136 cie at Yokohama the yen equivalent of $557,561.25 to be remitted by cable to Standard in New York. The Yokohama office of Yokohama Specie thereupon cabled its New York Agency to pay $557,561.25 to Standard in New York, and subsequently confirmed such cable instructions by letter (S. M. 5-13, 22-24, 28-33, 47-48; Exs. 1, 2, 2A, 3, 4 (p. 2), 5 (p. 2), 11, 18). [283-305, 325-32, 339-54, 384-8]

Found—L. C., J. S. C.

137 5. Upon receipt of such cable instructions by the New York Agency on August 29 1941, the New York Agency, having in its possession funds of the Yokohama office of Yokohama Specie in excess of $557,561.25 (S. M. 175) [678-81] advised Standard in New York both orally and in writing that it had received such instructions (S. M. 123-124, 129-134, 223-224; Ex. 7). [557-9, 572-86, 794-9] The New York Agency further advised Standard that upon issuance of a license under Executive Order 8389, as amended, authorizing the New York Agency to pay to Standard the 138 sum in question, the New York Agency would make payment from an account maintained by it with Guaranty Trust Company of New York (S. M. 148-158; Exs. E, F). [616-41]

Found—L. C., J. S. C.

6. No part of said sum of $557,561.25 has been paid by the New York Agency to Standard (Complaint, par. 18, admitted), but at no time on or after August 29, 1941, did the New York Agency purport to revoke its acceptance of the cable instructions received from the Yokohama office of Yokohama Specie (S. M. 107, 133-134, 161, 120-121). [523-5, 581-6, 646-8, 550-4]

Found—L. C., J. S. C.

Plaintiff's Proposed Findings of Fact and Conclusions of Law. 139

7. On December 8, 1941, the United States Congress declared that a state of war existed between the United States and Japan and on the same day the Superintendent took possession of the property in New York of Yokohama Specie (Complaint, pars. 12, 13, admitted).

Found—L. C., J. S. C.

8. On January 14, 1942, the Secretary of the Treasury issued a license to the Superintendent, 140
permitting him to liquidate the assets, property and business in the State of New York of Yokohama Specie, in accordance with the laws of said State (Ex. 15).

Found—L. C., J. S. C.

9. By letter dated September 28, 1942, the United States Alien Property Custodian advised the Superintendent that the Custodian had undertaken the supervision of the business and property in the State of New York of Yokohama Specie but that the Superintendent should retain possession 141
of such business and property and perform such acts in connection therewith as might be required or permitted by the Banking Law (Ex. 16).

Found—L. C., J. S. C.

10. By letter dated October 29, 1942, from the Federal Reserve Bank to the New York Agency, the Superintendent was advised that the Agency was authorized by the Treasury Department to engage in any transaction which might be engaged in by a person not a national of a blocked country without a specific Treasury license (Ex. 17).

Found—L. C., J. S. C.

142 11. On November 21, 1942, Standard filed proof of its claim for the aforesaid $557,561.25 in the liquidation of the business and property in New York of Yokohama Specie with the Superintendent and demanded priority of payment thereof. Said claim was rejected by the Superintendent on February 11, 1943 (S. M. 36; Ex. 8). [359-61]

Found—L. C., J. S. C.

143 12. Prior to the commencement of this action Standard duly assigned to plaintiff all its right, title and interest in and to its said claim for $557,561.25 against Yokohama Specie, the New York Agency and the Superintendent (Exs. 9, 10).

Found—L. C., J. S. C.

CONCLUSIONS OF LAW.

1. Plaintiff is a creditor of Yokohama Specie, whose claim arose out of a transaction with the New York Agency and his claim is entitled to pref-
144 erence against the assets in New York of Yokohama Specie Bank, Ltd.

Found—L. C., J. S. C.

2. Plaintiff is entitled to judgment in his favor against the Superintendent, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., in the sum of $557,561.25, with interest from ~~January 14, 1942.~~ October 29, 1942.

Found as modified and otherwise refused —L. C., J. S. C.

The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.

[Same Title.]

The issues of fact raised by the pleadings coming on to be tried by the Supreme Court, New York County, at Trial Term Part IV thereof, held by the undersigned without a jury, and having been tried on the 24, 25, 27, 30 of September, 1946, and the allegations and evidence of the parties having been heard; now, after hearing Cravath, Swaine & Moore, Esq. (Albert R. Connelly, Esq., of counsel) for the plaintiff, and Edward Feldman, Esq. (Henry L. Bayles, Esq. and Daniel Gersen, Esq., of counsel) for the defendant, Superintendent of Banks, and due deliberation having been had, I decide and find as follows:

Findings of Fact.

1. At all times hereinafter mentioned Standard Vacuum Oil Co. (hereinafter called "Standard") was and now is a corporation organized and existing under and by virtue of the laws of the State of Delaware, maintaining its principal office in the City of New York, and, prior to December 8, 1941, a branch office in Yokohama, Japan (hereinafter called "Standard, Yokohama"). (Admitted, Complaint Par. 1 S. M. 4). [282-4]

Found—L. C., J. S. C.

2. At all times hereinafter mentioned Yokohama Specie Bank, Ltd., was and still is a banking corporation duly incorporated under the laws of the Empire of Japan having its home office in Yokohama, Japan (hereinafter called "Y. S. B.,

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Yokohama") and was, prior to December 8, 1941, duly licensed by the Superintendent of Banks to transact a limited banking business in the State of New York and maintained an agency for the transaction of such business in the City of New York (hereinafter called "New York Agency").

(Admitted, Complaint Par. 2; Exs. Z, Z-1.)

Found—L. C., J. S. C.

149 3. The defendant, Elliott V. Bell, is and his predecessors were at all times mentioned herein Superintendent of Banks of the State of New York, hereinafter referred to as the "Superintendent."

(Admitted, Complaint Par. 3.)

Found—L. C., J. S. C.

4. For the purpose of supervision, examination and protection of the creditors of the New York Agency, the Banking Department of the State of New York has always treated the New York
150 Agency of a foreign banking corporation licensed to do business here as an entity separate and apart from the parent corporation or any of the other branches, offices or agencies, with separate assets and separate liabilities. Separate books and supporting records were required to be and were maintained by the New York Agency of Yokohama Specie Bank, Ltd. reflecting the assets in the possession and under the control of the New York Agency and all the liabilities of the Agency. Such books and records did not reflect the assets and liabilities of any other branch, office or agency of Yokohama Specie Bank, Ltd. (Ex. X; S. M. 296).

[965-7]

Refused as Evidentiary—L. C., J. S. C.

The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.

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5. Prior to July 26, 1941, Yokohama Specie Bank, Ltd., in Japan, duly appointed K. Nishi as its agent in charge of the New York Agency and T. Kanai and T. Doida as sub-agents. (S. M. 263.) [887-9] Prior to July 26, 1941, in accordance with the authority vested in him, Nishi duly designated certain Japanese individuals as agents to assist him in the operation of the New York Agency and known as agents "per procuration," abbreviated "per pro." or "p.p.". (S. M. 263, 191: Ex. V.) 152 [887-9, 717-20] Among such agents was S. Araki, who was in charge of the Cashier's Department and sometimes known as the "Cashier." (Ex. V; S. M. 189-192, 225). [713-22, 799-801] The agent, sub-agents and agents per procuration hereinabove mentioned were the only persons authorized to enter into any contracts on behalf of the New York Agency or to sign any checks, letters, agreements, contracts or other documents on behalf of such Agency. No American employee was given any authority to represent or act for the Agency in any of these respects or to incur any liability 153 on its behalf. (S. M. 263-265, 191-193, 211, 214.) [887-94, 717-24, 765-7, 772-5] No American was an "agent," "sub-agent," or "per pro. agent" of the New York Agency. (Ex. V.)

Refused as Evidentiary—L. C., J. S. C.

6 On April 10, 1940, the President of the United States issued Executive Order No. 8389 pursuant to the Trading with the Enemy Act (hereinafter sometimes referred to as the "Freezing Order") prohibiting certain transactions with or involving property of foreign countries designated in such order, or nationals thereof, ex-

154 ept as specifically authorized by the Secretary of the Treasury. On July 26, 1941, by Executive Order No. 8832 the aforesaid freezing order was amended so as to include Japan and its nationals.

Found—L. C., J. S. C.

7. On July 26, 1941, pursuant to the provisions of Executive Order 8389 as amended, and regulations and instructions issued pursuant thereto,
155 Cecil Ashwood was duly designated by the Treasury Department as Treasury Supervisor to take charge of the New York Agency of Yokohama Specie Bank, Ltd., and as such Treasury Supervisor, Cecil Ashwood, on the morning of July 26, 1941, duly took charge of the New York Agency and remained continuously in such charge until sometime after December 8, 1941. (S. M. 241-243, 206-209, 214-215, 245, 269-270) [836-42, 753-62, 772-7, 845-7, 901-6]

Refused as Evidentiary—L. C., J. S. C.

156 8. Upon taking charge of the New York Agency, Ashwood as Treasury Supervisor in the course of his duties duly instructed its agent, sub-agents, per pro. agents and employees, that they should not do any business, consummate any transactions, incur any liabilities, make any payments or transfers of credit, or make any entries in any book or record, unless and until approved by Ashwood and an appropriate Treasury license had been obtained. (S. M. 243-245, 260, 269-270, 258, 208-209, 247, 215, 217, 220, 234, 300-301) [840-7, 880-2, 901-6, 875-7, 757-62, 849-52, 775-7, 780-2, 787-90, 819-21, 975-9]

Refused as Evidentiary—L. C., J. S. C.

The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.

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9. During 1941, Standard was engaged in the business of marketing petroleum in various Far Eastern areas, including Japan where its business was conducted through the Yokohama office of Standard. Its practice was to ship petroleum products to Japan on consignment to its Yokohama office, which would remit the proceeds thereof after deduction of expenses to the New York office by purchasing dollar exchange in Japan payable in New York. To accomplish this 158
it was necessary to obtain a license from the Japanese governmental authorities for each shipment. (S. M. 47-49) [384-91]

Refused as Evidentiary—L. C., J. S. C.

10. Pursuant to licenses duly obtained in Japan (Exs. 19-22), Standard in Yokohama during the months of February and March, 1941, entered into four separate so-called "forward exchange contracts" (S. M. 48) [386-8] with Y. S. B., Yokohama, whereunder Standard in Yokohama agreed to pay to Y. S. B., Yokohama, 159
an aggregate of 2,378,928 yen, and in consideration thereof Y. S. B., Yokohama, agreed to pay to Standard in New York during the months of July and August, 1941, an aggregate of $557,561.25. (Exs. 23-26)

Refused as Evidentiary—L. C., J. S. C.

11. On or about July 28, 1941, the Japanese governmental authorities cancelled or suspended all outstanding forward exchange contracts, including the forward exchange contracts hereinabove described, and required that new applications be filed to reinstate such contracts. (Ex. A; S. M. 39, 51) [365-7, 393-5]

Refused as Evidentiary—L. C., J. S. C.

160 *The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.*

12. Thereafter and on or about August 27, 1941, the said contracts were reinstated and Standard in Yokohama cabled Standard in New York that it would remit the said sum of $557,561.25 to Standard in New York on the following Friday, August 29, 1941. (Ex. 1)

Refused as Evidentiary—L. C., J. S. C.

161 13. The foregoing cable was received by Standard in New York on August 28, 1941 (Ex. 1), and submitted to Harold Midtbo, an employee in the treasurer's department of Standard in New York, whose duties included the handling of cable remittances (S. M. 123-124, 129). [557-62, 572-4] Upon receipt of the cable, Midtbo forthwith telephoned Gustav Hapke, an employee in the cashier's department of the New York Agency, and inquired whether the New York Agency had received instructions to pay from Y. S. B., Yokohama. Upon being informed that no such instructions had as yet been received Midtbo requested
162 Hapke to telephone him upon the receipt thereof. At the same time Midtbo inquired whether the New York Agency had any objection if Standard made application to the Secretary of the Treasury for the necessary license. Hapke replied that he thought the Agency would have no objection (S. M. 129-130). [572-6]

Refused as Evidentiary—L. C., J. S. C.

14. On the following day Standard in Yokohama pursuant to the forward exchange contracts hereinabove referred to instructed Y. S. B., Yokohama, to debit its accounts with the sum of

2,378,928 yen and Y. S. B., Yokohama, thereupon and in accordance with its general practice—

(a) debited the yen balances maintained on its books in the name of Standard in Yokohama with the sum of 2,378,928 yen;

(b) credited the dollar account of the New York Agency on its books with the dollar equivalent thereof, to wit: $557,561.25;

(c) cabled the New York Agency as follows: "91781 Standard Vacuum Oil Co. dollars 557561 cent 25" (Exs. 27, 11). 164

Refused as Evidentiary—L. C., J. S. C.

15. In and by the foregoing cable Y. S. B., Yokohama, authorized and directed the New York Agency to pay to Standard in New York the sum of $557,561.25 (Ex. S, 7), and in accordance with its usual practice upon making such payment to debit the amount thereof against the dollar account of the Yokohama office maintained on the books of the New York Agency (S. M. 297, 302, 198). [968-9, 980-2, 734-6] The cable was received by the New York Agency on August 29, 1941, and, in accordance with the general practice (S. M. 203), [746-8] it was subsequently confirmed by written advice from the Yokohama office received by the New York Agency on October 25, 1941 (Ex. 18). 165

Refused as Evidentiary—L. C., J. S. C.

16. Prior to December 8, 1941, the New York Agency had no knowledge of the transactions between Standard in Yokohama and Y. S. B., Yokohama, other than that contained in the foregoing cable of August 29, 1941, and the confirma-

tion thereof subsequently received on October 25, 1941 (S. M. 209, 316). [738-41, 1013-5]

Found—L. C., J. S. C.

17. Prior to the freeze on July 26, 1941, upon receipt of cables similar to the foregoing, the practice of the Agency was as follows:

(a) The cable department would prepare
167 copies of the cable and forward one copy to Araki, the per pro. agent in charge of the cashier's department (S. M. 195, 234), [727-9, 819-21] and if he found it to be in order he would deliver it to one of the American clerks in the cashier's department, usually to Hapke (S. M. 195, 233-234). [727-9, 817-21]

(b) Upon receiving such copy Hapke or one of the other American clerks would immediately telephone the payee and advise him of the receipt of the instructions (S. M. 199-200, 235-236). [736-41, 822-6] No entry or
168 other memorandum of such conversation was ever made (S. M. 200-201). [738-43]

(c) Thereupon Hapke would enter the details of the cable in a register maintained in his department, known as the "Register of Bills and T. T. Payable" (S. M. 196, 226; Ex. 12). [729-31, 801-4] This register is a memorandum record kept in chronological order of all cable instructions similar to the one hereinabove referred to and, in addition to showing the date of the receipt of the cable, indicates the cable number assigned to it by the cashier's department (S. M. 240), [833-5] the name of the payee, the face amount to be

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paid, the date of payment, and other pertinent information (Ex. 12).

(d) Concurrently with the making of such entry Hapke would prepare a so-called "Transfer Voucher" (Ex. O), upon which was entered the proposed debit to the inter-office account of the forwarding branch and the proposed credit to "Current Account with Bankers," without, however, indicating the particular bank from which payment was to be made (S. M. 196, 226-229, 297). [729-31, 801-10, 968-9]

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(e) Hapke would thereupon deliver the transfer voucher to Araki who would instruct the clerk handling bank accounts as to the name of the bank from which the payment was to be made. Such clerk would then stamp on the voucher the name of such bank, and would draw a check thereon for the signature of Araki (S. M. 227-229). [804-10]

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(f) At the same time the cashier's department prepared a proposed letter of transmittal to the payee and a proposed receipt to be executed by the payee, and such papers together with the check and transfer voucher were presented to Araki for approval and signature (S. M. 197-198, 227). [731-6, 804-6]

(g) After the check and letter had been signed the papers were returned to Hapke who sent them out by messenger to the payee (S. M. 198, 210), [734-6, 763-5] usually on the same day that the cable instructions were received (S. M. 210, 85, 127). [763-5, 471-3, 567-9]

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(h) The voucher would then be given to the accounting department, which would make the entries indicated thereon (S. M. 230-231, 297). [810-5, 968-9]

(i) When the executed receipt was returned by the payee, Hapke would make an appropriate entry thereof in the Register of Bills and T. T. Payable (Ex. 12), and upon the cashier's copy of the cable (S. M. 201, 231), [741-3, 173 813-5] which would thereupon be filed away in a closed file (S. M. 203). [746-8] Sometime later the New York Agency would confirm to the remitting office that payment had been effected in accordance with its instructions (S. M. 203-204, 232). [746-50, 815-7]

(j) No credit was ever set up on the books of the Agency either prior to or after the freeze in favor of any payee. It was a cash transaction (S. M. 204-205, 85). [748-52, 471-3]

174 (k) In the event that prior to payment the remitting branch cancelled the instructions no payment would be made (S. M. 201-202). [741-5]

Refused as Evidentiary—I. C., J. S. C.

18. After July 26, 1941, there was a change in the procedure with respect to such cable instructions (S. M. 216): [777-80]

(a) As before, a copy of each cable would be delivered to Araki and by him to Hapke (S. M. 115-117). [539-45]

(b) In accordance with the instructions of Ashwood, the Treasury Supervisor, no

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entries were made in the Register of Bills and T. T. Payable, or on any books of the Bank (S. M. 217, 234, 300-301), [780-2, 819-21, 975-9] unless and until an appropriate Treasury license was obtained and the transaction approved by Ashwood (S. M. 217, 219-220, 222, 234, 300-301). [780-2, 785-9, 792-4, 819-21, 975-9]

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(c) Routine telephone calls to payees advising of receipt of instructions and letters containing similar advice were permitted without prior submission to or approval of Ashwood (S. M. 215-216, 251-252, 279-280, 317). [775-80, 858-63, 924-9, 1016-8]

(d) At times, applications for Treasury licenses would be made by the New York Agency and at times the payee himself would make the application (S. M. 217, 220, 248-249). [780-2, 787-9, 852-6]

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(e) When applications were prepared in the Agency, they would in the first instance be drafted by the cashier's department, and would then be submitted to Eugene Mulligan, an employee of the Agency, or one of his assistants, whose duty it was to check the application as to form (S. M. 112-113, 286-287, 271). [533-7, 941-5, 906-8] If proper in form, the application would be returned to the cashier's department and signed by Araki and then submitted to Ashwood for whatever action he saw fit (S. M. 113, 249, 271-272). [534-6, 854-6, 906-11]

(f) Ashwood would thereupon investigate the circumstances of the application, determine whether the facts were correctly stated

and on the basis of such facts would make a recommendation to the Secretary of the Treasury (S. M. 249-253). [854-65] Whenever it appeared to Ashwood that the proposed payment was not in satisfaction of a liability of the New York Agency existing on July 26, 1941, when the freeze became effective, he would recommend that the application be denied (S. M. 249, 253). [854-6,
179 863-5]

(g) Many applications for licenses authorizing cable transfers were made by the payees directly to the Secretary of the Treasury (S. M. 220, 248-249, 288), [787-9, 852-6, 945-8] and it was the duty of Mulligan or one of his assistants to furnish to such payees, upon inquiry, whatever information might be necessary to enable them to prepare the applications in proper form (S. M. 274, 114). [913-5, 537-9] Neither Mulligan nor any of
180 his assistants would have any specific knowledge about any particular cable instructions. The inquirer would explain the transaction and on the basis of the information so furnished Mulligan or his assistant would advise the inquirer as to what debits and credits on the books of the New York Agency must be authorized by the Treasury Department in order to enable the Agency to carry out the transaction (S. M. 292-294, 289, 114, 274). [955-62, 948-50, 537-9, 913-5] The information so furnished by Mulligan or his assistants would be based upon their general knowledge of the bookkeeping system of the New York Agency and not upon any knowl-

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edge of the facts underlying the specific transaction about which inquiry was made (S. M. 289-290, 292-294). [948-52, 955-62]

(h) After July 26, 1941, it was the practice of the Agency to make all payments by check drawn on the blocked account maintained by it at the Guaranty Trust Company (S. M. 275-276, 294) [915-20, 960-2] and Mulligan so advised all inquirers (S. M. 275-276, 294). [915-20, 960-2]

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(i) When replying to these inquiries Mulligan made no attempt to ascertain the amount of the deposit balance which the New York Agency had at the Guaranty Trust Company; nor did he keep any record of the inquiries or the amount involved in any of them; nor did he consult with the cashier's department or with anyone else before giving the requested information (S. M. 274, 275, 280, 281). [913-5, 915-7, 927-9, 929-31]

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(j) Apart from furnishing the information as aforesaid, Mulligan had nothing whatever to do with applications made directly by payees (S. M. 273). [911-3] Such applications were submitted by the applicants directly to the Secretary of the Treasury, and were not seen by Ashwood unless submitted to him by the Secretary of the Treasury for a recommendation. Some time after taking charge of the Agency Ashwood made arrangements for the submission of all such applications to him by the Secretary of the Treasury (S. M. 251). [858-61]

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(k) Pending action by the Secretary of the Treasury on an application for a license, the relative cable and other pertinent papers would be retained by Hapke in a so-called "pending" file in the cashier's department (S. M. 220-221, 225). [787-92, 799-801]

(l) If thereafter the license application were denied by the Secretary of the Treasury, the remitting branch of the bank would be
185 advised thereof (S. M. 222). [792-4] The relevant papers would be placed in a "closed" file (S. M. 221-222). [790-4]

(m) In the event that an application for a license were granted by the Secretary of the Treasury, the matter would be taken up with Ashwood for his approval (S. M. 219-220). [785-9] If Ashwood had not theretofore made an investigation of the facts upon which the application was based, he would do it at that time and would then decide whether or
186 not to make payment under the license (S. M. 248). [852-3] If Ashwood determined that the facts did not warrant payment, no payment would be made (S. M. 222, 250-251, 248; Ex. U, p. 2). [792-4, 856-61, 852-4]

(n) If Ashwood approved of a payment under a license issued by the Secretary of the Treasury, the entries necessary to effectuate the transaction would then be made on the books of the Agency and payment would be effected (S. M. 220, 300-301). [787-9, 975-9]

Refused as Evidentiary—L. C., J. S. C.

19. When the cable instructions to pay Standard $557,561.25, hereinabove in paragraphs 14

and 15 referred to, were received by the New York Agency, a copy thereof in accordance with the practice of the Agency was referred to Hapke of the cashier's department of the Agency (S. M. 222, 236-237; Ex. S). [792-4, 824-8] Hapke thereupon telephoned Midtbo of Standard and advised him of the receipt of such instructions and Midtbo advised Hapke that Standard would immediately proceed to submit a license application, and that he, Midtbo, would advise Hapke as soon as a 188
license was received (S. M. 131, 223-224, 237-238, 319). [577-9, 794-9, 826-30, 1021-3]

Refused as Evidentiary—L. C., J. S. C.

20. Thereafter on several occasions between August 29 and November 1, 1941, Hapke telephoned Midtbo and inquired whether a Treasury license had yet been received and in each case Midtbo advised Hapke that it had not been received (S. M. 132-133). [579-84]

Refused as Evidentiary—L. C., J. S. C. 189

21. At no time during the course of his conversations with Midtbo, or anyone else connected with Standard in New York, on August 28, 1941, or thereafter, did Hapke state that the New York Agency would pay $557,561.25 to Standard in New York if a license were obtained; or that the New York Agency had available said sum with which it would make payment to Standard if a license were obtained; or that the New York Agency would make payment of said sum to Standard out of an account at the Guaranty Trust Company; or that he, Hapke, had been instructed by someone in the

New York Agency to make payment to Standard if a license were obtained (S. M. 317-318). [1016-20]

~~Found~~—L. C., J. S. C.
Refused—L. C., J. S. C.

22. Following the conversation on August 29, 1941, with Midtbo, Hapke dictated a letter to Standard for the signature of Araki and after it was signed by Araki it was sent out to Standard either by messenger or by mail (S. M. 223, 238-239). [794-7, 828-33] The letter is as follows (Ex. 7):

"The Yokohama Specie Bank, Limited
New York Agency
Equitable Building

"In Reply
Please Address Attention
Cashier's Dept.
New York

"New York, August 29, 1941.

"Standard Vacuum Oil Company
10 Broadway
New York City
New York.

"Gentlemen:

Att: Mr. Mitbo:

"Referring to our telephone conversation of today, we wish to advise you that we have received tele-

graphic instructions from our Yokohama office to pay you the sum of $557,561.25. 193

"We understand that you are filing an application with the Treasury Department of the U.S.A. for a License in order to permit us to make this payment to you.

"Awaiting your reply regarding this matter, we remain

"Yours very truly, 194

The Yokohama Specie Bank, Ltd.
S. Araki

p. p. Agent"

Refused as Evidentiary—L. C., J. S. C.

23. Standard received the foregoing letter on September 2, 1941 (Ex. 7, Ex. 8, p. 11; S. M. 143). [604-6] It never replied thereto (S. M. 224-225). [797-801]

Refused as Evidentiary—L. C., J. S. C. 195

24. The letter of August 29, 1941, confirmed the conversation of that day between Midtbo and Hapke, and was so understood and accepted by Standard (Ex. 8, p. 11; Bill of Pars. Par. 1a; S. M. 319). [1021-3] The letter does not contain any promise or commitment by the Agency to make payment to Standard.

Refused as Evidentiary—L. C., J. S. C.

25. On August 29, 1941, Araki had no authority to make any promise or give any commitment on

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behalf of the New York Agency that it would make payment to Standard in New York of the sum of $557,561.25 if or when a license was obtained, or to incur any other obligation on behalf of the New York Agency without the express approval of Ashwood (S. M. 260). [880-2]

Refused as Evidentiary—L. C., J. S. C.

197 26. On August 29, 1941, Eugene J. Kenney was an assistant-treasurer of Standard in New York, and had charge of the submission of applications for Treasury licenses on behalf of Standard. (S. M. 148-150) [616-22] Kenney prepared an application for a Treasury license in connection with the cable instructions of August 29, 1941, and in the course thereof he telephoned Hapke and Mulligan on that day. (S. M. 151) [622-5]

Refused as Evidentiary—L. C., J. S. C.

198 27. In the telephone conversation with Hapke on August 29, 1941, Kenney verified the details of the instructions received by the New York Agency, and asked Hapke to furnish him with information as to book entries for use in preparing the application for a Treasury license. Hapke referred Kenney to Mulligan for such information. (S. M. 152-153) [625-9]

Refused as Evidentiary—L. C., J. S. C.

28. Thereafter and on the same day Kenney telephoned Mulligan, and advised him of the conversation with Hapke. Kenney then informed Mulligan that in order to prepare a complete and accurate application for a license he needed to

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know the name of the account on the books of the Agency which would be charged when payment was made. In reply, Mulligan advised Kenney that the account of the Yokohama office of the bank would be charged. (S. M. 153-154) [627-32] Later in the day, Kenney telephoned Mulligan again and stated that it would also be necessary to specify in the license application the name of the New York bank from which payment would be made and the name of the account on the books of such bank which would have to be debited. Mulligan replied that the bank was "The Guaranty Trust Company" and the account on its books which would have to be debited was the account entitled "Yokohama Specie Bank, New York Agency." (S. M. 155-157) [632-9]

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Refused as Evidentiary—L. C., J. S. C.

29. On August 29, 1941, after he had completed the draft of the application, Kenney again telephoned Mulligan and read to him the second paragraph of subdivision C thereof containing the information furnished by Mulligan and Mulligan said that he felt it was satisfactory. (S. M. 157-158) [637-41]

201

Refused as Evidentiary—L. C., J. S. C.

30. In the foregoing conversations it was understood by both Kenney and Mulligan that information was being furnished by Mulligan as to what book entries would be made in the event that payment should be ultimately effected. (S. M. 114) [537-9]

Refused as Evidentiary—L. C., J. S. C.

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31. Within a period of two or three weeks following August 29th, Kenney telephoned Mulligan on two occasions to inquire whether Mulligan had heard anything about the application and Mulligan replied that he had not. (S. M. 158-160) [639-46]

Refused as Evidentiary—L. C., J. S. C.

32. No memorandum was made by Mulligan of
203 any of the foregoing conversations. (S. M. 274, 276) [913-5, 918-20] Neither on August 29, 1941, nor any time thereafter prior to the close of the New York Agency did Mulligan have any knowledge of the cable instructions of August 29, 1941, except as furnished to him by Kenney during the course of the foregoing conversations, and the information furnished by him to Kenney in such conversations was given in accordance with his general practice as described in paragraph 18. (S. M. 278-279, 153, 292-294, 114; 271, 76) [922-6, 627-9, 955-62, 537-9, 906-8, 451-3]

204 Found—L. C., J. S. C.

33. At no time on or after August 29, 1941, did Mulligan ever state that in the event a license were obtained the Agency would actually make payment of $557,561.25 to Standard, or that payment would actually be made out of funds on deposit with the Guaranty Trust Company. (S. M. 284, 114) [936-8, 537-9]

~~Found~~—L. C., J. S. C.
Refused—L. C., J. S. C.

34. At no time did Mulligan, Hapke or any other American employee of the Agency have any

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authority to make any promise or commitment or incur any obligation on behalf of the Agency. (S. M. 211, 191-193, 263-265, 260) [765-7, 717-24, 887-94, 880-2]

Refused as Evidentiary—L. C., J. S. C.

35. At no time on August 29, 1941, or thereafter, did the New York Agency or any of its employees or representatives prepare any transfer voucher or make any entries in the Register of Bills and T. T. Payable, or in any book of account or other book or record of the Agency, with respect to the cable instructions of August 29, 1941, hereinabove referred to. (Ex. EE)

206

Found—L. C., J. S. C.

36. At no time on August 29, 1941, or thereafter, did the New York Agency or any of its agents or employees hold apart, set aside, segregate, appropriate or otherwise earmark any of its funds, assets or accounts for the purpose of paying the sum of $557,561.25 to Standard in New York, nor did it or any of them ever promise or agree with or for the benefit of Standard that it would hold apart, set aside, segregate, appropriate or otherwise earmark any such property for its benefit.

207

Found—L. C., J. S. C.

37. At all times herein mentioned an account was maintained on the books of the New York Agency in the name of the Yokohama branch of the bank entitled "Inter-Office A/C—Their A/C," which account reflected the dollar balance be-

208 tween the Yokohama office and the New York Agency (S. M. 296-297), [965-9] and in which was entered all dollar transactions affecting the Yokohama office (S. M. 302). [980-2] On August 29, 1941, there was a credit balance in such account of $1,634,744.69 (S. M. 298). [970-2] This balance became a debit balance on November 17, 1941, on which date it appears that the Yokohama office was debtor to the New York Agency in the sum
209 of $147,678.10 (S. M. 300, 315). [975-7, 1011-3] The balance continued as a debit balance after November 17, 1941, and when the New York Agency was taken over by the Superintendent of Banks, it amounted to $333,842.02 (S. M. 300, 315). [975-7, 1011-3]

Found—L. C., J. S. C.

38. In addition to the dollar account above referred to, a yen account in the name of the Yokohama office was maintained on the books of the New York Agency (S. M. 302-303). [980-4] On
210 August 29, 1941, there was a credit balance in this account in favor of the Yokohama office of $23,519.29. Such indebtedness thereafter increased to the sum of $101,545.52 on November 12, 1941. On December 3, 1941, the account indicated that there was no balance due to or from the Yokohama office. No entries were made in the account subsequent to December 3, 1941 (S. M. 314). [1008-10]

Found—L. C., J. S. C.

39. The foregoing accounts are the only accounts on the books of the New York Agency re-

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flecting balances existing between the New York Agency and the Yokohama office (S. M. 303). [982-4]

Found—L. C., J. S. C.

40. On August 29, 1941, after the oral conversations hereinabove referred to, Standard in New York filed an application for a Treasury license, which stated in part as follows (Ex. F):

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"Applicant respectfully requests that the license issued pursuant to this Application authorize (1) the Yokohama Specie Bank, New York Agency, to pay the amount of such remittance out of funds such Agency has on deposit with the Guaranty Trust Company of New York, 140 Broadway, New York, New York, and to debit in respect thereof the account maintained on the books of the Yokohama Specie Bank, New York Agency, in the name of the Yokohama Specie Bank, Yokohama, Japan, and (2) the Guaranty Trust Company of New York to make payment to Applicant of said amount and to debit in respect thereof the blocked account maintained on its books in the name of the Yokohama Specie Bank, New York Agency. . . ."

213

Found—L. C., J. S. C.

41. Thereafter, by letter dated October 15, 1941, Federal Reserve Bank notified Standard in New York that its application for a license involved a question of basic policy which was then receiving the active consideration of the Treasury Department and that when a decision thereon had

214 been reached and action taken, Standard would be promptly notified (Ex. G).

Found—L. C., J. S. C.

42. The application filed by Standard for a license was brought to the attention of Ashwood (S. M. 262), [885-7] and in accordance with his practice, Ashwood advised the Federal Reserve Bank that, in his opinion, the application should
215 be denied (S. M. 270-271). [903-8]

Found—L. C., J. S. C.

43. On December 8, 1941, on the outbreak of the war, the Superintendent of Banks took possession of the business and property in New York of the Yokohama Specie Bank, Ltd. including the New York Agency for the purpose of liquidation, and has since continued in such possession, and is now liquidating the same (Ex. EE; Admitted, Complaint Par. 13).

Found—L. C., J. S. C.

216 44. By letter dated December 19, 1941, the Superintendent of Banks was authorized by the Federal Reserve Bank to effect payments from the blocked accounts of the New York Agency for the purpose of office maintenance and other expenses incidental to the administration of the property of such Agency in anticipation of liquidation (Ex. AA).

Found—L. C., J. S. C.

45. On December 29, 1941, Standard in New York filed with the Secretary of the Treasury a further application for a license to permit the liquidator of the New York Agency to make pay-

ment of the sum of $557,561.25, and in that connection stated (Ex. E):

> "In view of the existing state of war between the United States and the Japanese Empire it seems reasonable to assume that uncertainties concerning the relations between this country and Japan have ended and that questions of policy covering the payment by Japanese of their debts in the United States have been resolved."

Found—L. C., J. S. C.

46. By letters dated January 13, 1942 and January 14, 1942, Federal Reserve Bank advised Standard in New York that its license applications dated December 29, 1941 and August 29, 1941, respectively, were "denied in accordance with instructions of the Treasury Department" (Exs. H and I).

Found—L. C., J. S. C.

47. On January 14, 1942, Federal Reserve Bank issued a license on behalf of the Secretary of the Treasury to the Superintendant of Banks authorizing him to make payments to depositors and to perform all other acts appropriate to the orderly liquidation of the assets, property and business of the New York Agency, subject to the following stipulation among others (Ex. 15):

> "2. Transactions involving a blocked national other than the bank in liquidation shall be effected only as authorized by a general or specific license."

Found—L. C., J. S. C.

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48. On October 27, 1941, Standard in New York received from Standard in Yokohama a transcript of journal entries made by the Yokohama office of Standard affecting the New York office, entitled "Entries to New York Office" (Ex. 3; S. M. 40). [368-70] Ordinarily, upon receipt by the New York office of such "Entries to New York Office," it was the practice of Standard in New York to make corresponding entries in the accounts main-
221 tained on its books in the name of its Yokohama office (S. M. 37). [361-3] After July 26, 1941, no such entries were made without a Treasury license (S. M. 100, 57). [505-7, 407-9] On the "Entries to the New York Office" (Ex. 3) received by Standard on October 27, 1941, there appeared the following entry:

"Particulars"	"Station Currency"	"U. S. Currency"
"T. T. Remittance to New York office, made through the Yoko-
222 hama Specie Bank, Ltd., Yokohama, on Aug. 29, 1941 @ Ex. 23 7/16	2,378,928.00	557,561.25"

No entry was made on the books of Standard, New York, with respect thereto until July, 1942 (S. M. 40-42, 54, 91-94, 166). [368-74, 400-3, 485-93, 657-60]

Refused as Evidentiary—L. C., J. S. C.

49. In July, 1942, Standard, pursuant to Treasury license theretofore obtained (Ex. D), wrote off on its books the said sum of $557,561.25 as a bad

The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.

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debt "uncollectible because license to permit the N. Y. Agency to make payment was denied by the U. S. Treasury" (Exs. B, C, K; S. M. 66-67, 70, 164-167). [428-33, 438-40, 653-62] Standard thereafter took a deduction in its income tax return for 1941 of this amount (S. M. 170, 172). [667-9, 672-4] As of December 31, 1944, as a result of the decision of the Court of Appeals herein, Standard, pursuant to Treasury license (Ex. JJ), set up this item for the first time as a 224
claim against the New York Agency (Exs. L, M), and thereafter the deduction of this item as a bad debt was disallowed by the Bureau of Internal Revenue of the Treasury Department (S. M. 173). [674-6]

Refused as Evidentiary—L. C., J. S. C.

50. Standard knew at the time it wrote off the item of $557,561.25 as a bad debt that the New York Agency had adequate funds with which to meet all the liabilities of the New York Agency (S. M. 171-172; [669-74] Ex. E, p. 1 bottom). 225

Refused as Evidentiary—L. C., J. S. C.

51. Upon the denial on January 13 and 14, 1942, of Standard's applications for licenses both Standard and the New York Agency understood that any duty owed to Standard by the New York Agency to make payment of the sum of $557,561.25 ceased and terminated (Ex. B; S. M. 221-222). [790-4]

Refused as Evidentiary—L. C., J. S. C.

52. On December 8, 1941, when the Superintendent of Banks took possession of the New

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York Agency, and at all times thereafter, it was and still is unknown whether the Secretary of the Treasury would issue a license authorizing the New York Agency to pay Standard the sum of $557,561.25.

Refused as Evidentiary—L. C., J. S. C.

53. On December 8, 1941, and at all times there-
227 after, whatever claim Standard may have had against the Agency was and still is contingent and uncertain.

~~Found~~—L. C., J. S. C.
Refused—L. C., J. S. C.

54. On September 28, 1942, the Alien Property Custodian pursuant to the Trading with the Enemy Act and Executive Order No. 9095, as amended, issued and served upon the Superintendent of Banks his Supervisory Order No. 27, whereunder he undertook the supervision to the
228 extent deemed necessary or advisable from time to time by him of the New York Agency and of all property of whatever nature whatsoever owned or controlled by it, without, however, vesting such Agency or any of its property or assets (Ex. CC).

Found—L. C., J. S. C.

55. Thereafter and by letter dated September 28, 1942, the Alien Property Custodian authorized the Superintendent of Banks to retain possession of and liquidate the New York Agency, its property and assets and, in the course thereof, to do such acts and perform such duties as may be re-

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quired of or permitted to him by and in accordance with and subject to the provisions of the Banking Law of the State of New York. Said letter further required the Superintendent to submit for the approval of the Custodian all claims against the Agency which the Superintendent proposed to accept, together with certain details with respect thereto (Ex. 16).

Found—L. C., J. S. C.

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56. By letter dated October 29, 1942, the Federal Reserve Bank advised the Superintendent of Banks that in view of the foregoing Supervisory Order No. 27 issued by the Alien Property Custodian, the Superintendent was authorized by the Treasury Department so far as Executive Order No. 8389, as amended, was concerned, to engage in any transaction on or after October 29, 1942, which might be engaged in without a specific license of the Treasury Department by a person who was not a national of any blocked country. The letter of the Federal Reserve Bank further 231 stated that the license theretofore issued by the Treasury Department dated January 14, 1942, hereinabove referred to (Ex. 15), was thereby revoked (Ex. 17).

Found—L. C., J. S. C.

57. On August 25, 1942, the Superintendent issued a notice pursuant to the Banking Law requiring all persons having claims against the Yokohama Specie Bank to file proofs of such claims with the Superintendent on or before November 23, 1942 (Admitted, Complaint Par. 15).

Found—L. C., J. S. C.

232 *The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.*

58. Thereafter and on November 21, 1943, Standard in New York filed a claim with the Superintendent of Banks for the sum of $557,561.25 (Ex. 8). Said claim was rejected by the Superintendent of Banks on February 11, 1943 (Ex. 8, p. 15). No part of the said sum of $557,561.25 has been paid by the Superintendent of Banks to Standard or its assignee.

Found—L. C., J. S. C.

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59. On August 10, 1943, such claim was assigned by Standard to Eugene T. Singer, the plaintiff herein (Exs. 9, 10).

Found—L. C., J. S. C.

60. On February 15, 1943, the Alien Property Custodian issued Vesting Order No. 915 pursuant to the Trading with the Enemy Act and Executive Order No. 9095, as amended, vesting in himself for the benefit of the United States the excess proceeds of the business and property in New York of The Yokohama Specie Bank, Ltd., in the possession of the Superintendent, including the excess proceeds of all assets of the New York Agency "remaining after the payment of the claims of the creditors, accepted or established in accordance with the Banking Law of the State of New York, arising out of transactions had by them with the New York Agency of said The Yokohama Specie Bank, Ltd., or whose names appear as creditors on the books of such agency, together with interest on such claims and the expenses of liquidation" (Ex. DD).

234

Found—L. C., J. S. C.

The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.

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61. On April 15, 1944, the claimant herein filed a claim with the Alien Property Custodian for the sum of $557,561.25 based upon a "claim for unpaid telegraphic transfer from Yokohama Specie Bank, Ltd., Yokohama, Japan" (Ex. J).

Found—L. C., J. S. C.

62. Neither the name of Eugene T. Singer nor that of Standard Vacuum Oil Co. appeared on the books or records of the New York Agency on August 29, 1941, or at any time subsequent thereto as a creditor or owner of an account payable (Ex. EE).

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Found—L. C., J. S. C.

CONCLUSIONS OF LAW.

1. The cable instructions of August 29, 1941, authorized the New York Agency to make payment to Standard of $557,561.25, and to debit the account of the Yokohama office on the books of the New York Agency with the amount paid by it to Standard.

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Refused—L. C., J. S. C.

2. The receipt by the New York Agency from the Yokohama office of Yokohama Specie Bank, Ltd. of the cable instructions of August 29, 1941, did not of itself create an obligation on the part of the Agency to make payment of the sum of $557,561.25 to Standard. (See: *Erb* v. *Banco di Napoli*, 243 N. Y. 45.)

Refused—L. C., J. S. C.

238 *The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.*

3. The notification by the New York Agency to Standard that it had received the cable instructions of August 29, 1941, did not of itself create an obligation on the part of the Agency to make payment of the sum of $557,561.25 to Standard. (See: *Williston on Contracts,* (Rev. Ed.) Sec. 349, p. 1035.)

Refused—L. C., J. S. C.

239 4. The conversation between Midtbo and Hapke whereby Hapke advised Midtbo of the receipt of the instructions of August 29, 1941, and of the fact that the Agency had no objection to Standard's applying for a license did not constitute a promise on the part of Hapke or the Agency to make payment of the sum of $557,561.25 to Standard. (See: Brief, p. 6 *et seq.*)

Refused—L. C., J. S. C.

5. The letter of August 29, 1941, confirming the aforesaid conversation between Midtbo and Hapke
240 did not constitute a promise on the part of Araki or the Agency to make payment of the sum of $557,561.25 to Standard. (See: Brief, p. 8, *et seq.*)

Refused—L. C., J. S. C.

6. The conversation of August 29, 1941, between Kenney and Hapke whereby Hapke verified the fact that the Agency had received the cable instructions of August 29, 1941, and referred Kenney to Mulligan for information as to book entries did not constitute a promise on the part of Hapke or the Agency to make payment to

The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.

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Standard of the sum of $557,561.25. (See Brief, p. 11.)

Refused—L. C., J. S. C.

7. The conversations of August 29, 1941, between Kenney and Mulligan whereby Mulligan furnished Kenney with information for use in preparing the application for a license did not constitute a promise on the part of Mulligan or the Agency to make payment to Standard of the sum of $557,561.25. (See: Brief, p. 11, *et seq.*)

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Refused—L. C., J. S. C.

8. At no time did the New York Agency or any of its agents or employees make any promise or give any commitment to Standard to pay it the sum of $557,561.25, or to pay it such sum out of funds of the Agency on deposit with the Guaranty Trust Company of New York. (See: Brief, p. 4, *et seq.*)

Refused—L. C., J. S. C.

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9. The New York Agency did not on August 29, 1941, or at any time thereafter, receive any fund, or other property, or accept any credit from its Yokohama office for payment to Standard. (See: *Sokoloff* v. *National City Bank*, 250 N. Y. 69; *Friede* v. *National City Bank*, 250 N. Y. 288; *Stoller* v. *Coates*, 88 Mo. 514; *Rekstin* v. *Severo Sibirski*, 1 K. B. 47.)

Refused—L. C., J. S. C.

244 *The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.*

10. At no time on August 29, 1941, or thereafter did the New York Agency set aside, hold apart, segregate, appropriate or otherwise earmark any of its funds or other property for the use of Standard, nor did the New York Agency ever agree to do so. (See: p. 32, *et seq.*)

Refused—L. C., J. S. C.

11. Neither Hapke nor Mulligan at any time
245 were authorized to bind the Agency by making a promise or commitment on its behalf either to pay Standard the sum of $557,561.25 or to set aside, hold apart, segregate, appropriate or otherwise earmark any such sum for the use of Standard. (See: Brief, p. 18, *et seq.*)

Refused—L. C., J. S. C.

12. From and after July 26, 1941, the Agency and all of its agents and employees were prohibited from incurring any obligation on behalf of the Agency, except as specifically authorized by the Treasury Supervisor in charge of the Agency.
246 (See: Brief, p. 20 et seq.)

Refused—L. C., J. S. C.

13. The Treasury Supervisor in charge of the Agency did not on August 29, 1941, or at any time thereafter, authorize the Agency or any of its agents or employees to make any promise or commitment or to incur any obligation on behalf of the Agency to pay Standard the sum of $557,561.25, or to set aside, hold apart, segregate, appropriate or otherwise earmark any such sum for the use of Standard. (See: Brief, p. 20, et seq.)

Refused—L. C., J. S. C.

The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.

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14. No enforcible legal obligation against the New York Agency to make payment of $557,561.25 to Standard in accordance with the cable instructions of August 29, 1941, was created by the letter to Standard of that day, or by any of the oral conversations participated in by Hapke and Mulligan. (See: Brief, p. 26, et seq.)

Refused—L. C., J. S. C.

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15. The creation of an enforcible legal obligation against the Agency to make payment of $557,561.25 to Standard in accordance with the cable instructions of August 29, 1941, was and is prevented by the failure of the Treasury Department to grant a license under and pursuant to the provisions of Executive Order 8389. (See: Brief, p. 48, et seq.)

Refused—L. C., J. S. C.

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16. Payment by the New York Agency to Standard of the sum of $557,561.25 in accordance with the cable instructions of August 29, 1941, was and is prohibited by Executive Order 8389, unless and until an appropriate license of the Treasury Department is obtained. (See: Brief, p. 44, et seq.)

Refused—L. C., J. S. C.

17. Any obligation by the New York Agency to pay Standard the sum of $557,561.25 was terminated when the license applications were denied by the Treasury Department on January 13 and January 14, 1942. (See: Brief, p. 40, et seq.)

Refused—L. C., J. S. C.

250 *The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.*

18. On December 8, 1941, and at all times thereafter, the claim of Standard was and still is uncertain and contingent upon the granting of a Treasury license, and by reason thereof it is not entitled to participate in the distribution of the assets in possession of the Superintendent. (See: Brief, p. 43, et seq.)

Refused—L. C., J. S. C.

251 19. The cable instructions of August 29, 1941, were revocable, and were revoked on December 8, 1941, by the outbreak of the war and the take-over of the New York Agency by the Superintendent of Banks. (See *Williams* v. *Paine*, 169 U. S. 55; *Matter of Vavoudis*, 141 Misc. 823, affd. without opin. 233 App. Div. 672.)

Refused—L. C., J. S. C.

20. The claim asserted by plaintiff does not arise out of a transaction had by Standard with
252 the New York Agency, within the meaning of subdivision 4(a) of Section 606 of the Banking Law.

Refused—L. C., J. S. C.

21. Neither the name of plaintiff nor that of Standard appears as a creditor on the books of the New York Agency, within the meaning of subdivision 4(a) of Section 606 of the Banking Law. (See: Brief, p. 49, et seq.)

Refused—L. C., J. S. C.

22. The claim asserted by plaintiff is not entitled to be preferred under subdivision 4(a) of

The Defendant, Superintendent of Banks, Proposed Findings of Fact and Conclusions of Law.

Section 606 of the Banking Law and, therefore, cannot participate in the distribution of the assets of the New York Agency in the possession of the Superintendent. (See *Orvis* v. *Bell*, 294 N. Y. 844, aff'g 268 App. Div. 851, aff'g 182 Misc. 616.) 253

Refused—L. C., J. S. C.

23. No interest is payable on any claim against the New York Agency for any period during which payment of such claim is prohibited by Executive Order 8389. Payment to plaintiff of the sum of $557,561.25 has been since August 29, 1941, and still is prohibited by said Executive Order. (See: Brief, p. 44, et seq.) 254

Refused—L. C., J. S. C.

24. Defendant, Superintendent of Banks, is entitled to judgment dismissing the complaint on the merits, without prejudice to the right of plaintiff to assert his claim against the Yokohama Specie Bank, Ltd. (the foreign corporation) or the Alien Property Custodian. 255

Refused—L. C., J. S. C.

Dated: New York, N. Y., December , 1946.

.....

J. S. C.

256 **Plaintiff's Application to the Court to Change Certain Findings.**

CRAVATH, SWAINE & MOORE
15 Broad Street
New York 5
New York

February 27, 1947

Singer v. Yokohama Specie Bank, Ltd. *et al.*

Dear Sir:

257 Upon examination of the notations indicating your disposition of the proposed findings of fact in the above-entitled action, we have noted three proposed findings, marked "Found", which might be regarded as inconsistent with other and fundamental findings.

You have adopted plaintiff's proposed finding No. 5 which contains the following statement:

> "The New York Agency further advised Standard that upon issuance of a license under Executive Order 8389, as amended, authorizing the New York Agency to Pay to
258 Standard the sum in question, ($557,561.25) the New York agency would make payment from an account maintained by it with Guaranty Trust Company of New York."

In view of that finding, we believe that the Superintendent's proposed findings Nos. 21 and 33, should be refused. The only conversations which took place between representatives of the Agency and Standard in connection with this transaction were the conversations between Midtbo of Standard and Hapke of the Agency and between Kenney of Standard and Hapke and Mulligan of the Agency.

Plaintiff's Application to the Court to Charge Certain Findings 259

We submit that the facts fully warrant your Honor's adoption of plaintiff's proposed finding No. 5 and the refusal of the Superintendent's proposed findings Nos. 21 and 33.

We also respectfully submit that the Superintendent's proposed finding No. 53 which is:

> "On December 8, 1941 and at all times thereafter whatever claim Standard may have had against the Agency was and still is contingent and uncertain". 260

is inconsistent with your Honor's decision in favor of the plaintiff and should be refused. It is also submitted that this proposed finding of fact is in reality a legal conclusion which has heretofore been determined adversely by the Court of Appeals to a similar contention made by the Superintendent in his petition for a reargument. This was discussed in our reply brief at page 10.

We thought it best to bring this matter to your Honor's attention before we submitted a decision and judgment for your signature. We shall be happy to appear before your Honor and further 261 discuss the above if you so desire.

A copy of this letter has been sent to counsel for the Superintendent of Banks.

Respectfully yours,

CRAVATH, SWAINE & MOORE (signed)

Honorable LLOYD C. CHURCH,
Justice of the Supreme Court,
County of New York,
County Court House,
New York, N. Y.

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The Superintendent of Banks' Reply to Plaintiff's Application.

State of New York
BANKING DEPARTMENT
80 Centre Street
New York 13, N. Y.

Liquidation Bureau
80 Spring St., New York 12, N. Y.

February 28, 1947.

263 Hon. Lloyd Church
Justice of the Supreme Court
Centre & Pearl Streets,
New York, N. Y.

Re: Singer v. *Yokohama Specie Bank, Ltd.*

Dear Sir:

We are in receipt of a copy of a letter addressed to your Honor by counsel for plaintiff in which they request you to reverse your previous decision and to reject the findings of the Superintendent
264 of Banks numbered 21, 33 and 53, all of which have been heretofore found by you to be supported by the record.

Our remarks are addressed solely to findings numbered 21 and 33. It may be as plaintiff urges that finding number 53 is a conclusion of law, and therefore the Superintendent does not press for its inclusion.

Finding numbered 21 is to the effect that Hapke never made an express oral promise to pay Standard the sum of $557,561.25. Finding numbered 33 is to the effect that Mulligan never made any such oral promise. Since both of these findings are

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supported by evidence which is wholly uncontroverted, it would be, we submit, an error of law to refuse to make them.

Plaintiff argued before your Honor that no express promise was necessary under the decision of the Court of Appeals. The Superintendent argued to the contrary. In your decision you adopted plaintiff's theory of the law of the case. You held that judgment should be for plaintiff although no express oral promise to make payment to Standard had been made. Not satisfied 266
with having succeeded in securing a decision in his favor on the theory which it claimed before your Honor to be correct, plaintiff now wishes to recover also on the theory which he rejected, and is willing to distort the record in order to accomplish his purpose.

We submit that it would be unfair and unjust for this Court to refuse to make findings which are based on uncontroverted evidence, and to which findings plaintiff made no objection at any previous stage of this proceeding. The references to the Record contained in findings num- 267
bered 21 and 33 and the supporting references contained in findings numbered 17-20 to 26-32 must convince even a casual reader that the position which plaintiff now wants this Court to take is wholly unwarranted.

A copy of this letter is being sent this day to counsel for plaintiff.

Very truly yours,

EDWARD FELDMAN
Attorney for Liquidations.

By HENRY L. BAYLES (signed)

268 **Judgment.**

At a Trial Term, Part IV, of the Supreme Court, held in and for the County of New York, at the Court House thereof, New York, N. Y., on the 13th day of March, 1947.

Present:

Hon. LLOYD CHURCH,
Justice.

269 [SAME TITLE.]

The above-entitled action (the action having been severed against and stayed as to defendant The Yokohama Specie Bank, Limited, by order of this Court entered herein on April 19, 1944) having regularly come on for trial at Trial Term, Part IV, of this Court, before Hon. Lloyd Church, without a jury, and the parties having appeared by their respective counsel, and the issues having been tried on the 24th, 25th, 27th and 30th days of September, 1946, and after hearing and taking
270 the proofs of the respective parties and after due consideration thereof, the Court having filed a memorandum decision directing judgment in favor of plaintiff and against the defendant Elliott V. Bell as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., and having made and filed its findings of fact and conclusions of law, it is accordingly

ADJUDGED that plaintiff is a creditor of The Yokohama Specie Bank, Ltd., whose claim arose out of a transaction with its New York Agency

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and his claim is entitled to preference against the assets in New York of The Yokohama Specie Bank, Ltd., pursuant to the provisions of Section 606, Subdivision 4(a), of the Banking Law of the State of New York, in the aggregate amount hereinafter set forth, and on motion of Cravath, Swaine & Moore, attorneys for plaintiff, it is

ADJUDGED that Eugene T. Singer, plaintiff, of No. 26 Broadway, New York, N. Y., recover of defendant, Elliott V. Bell as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., of No. 80 Spring Street, New York, N. Y., the sum of $557,561.25, with interest thereon from October 29, 1942, amounting to $146,096.32 to the date of signing hereof, and with the further sum of $183.30, interest from the date of signing to the date of entry hereof, together with the further sum of $141.10 costs and disbursements of the action, as taxed, amounting in the aggregate to the sum of $703,981.97.

272

ENTER:

273

L. C.
Justice of the Supreme Court
of the State of New York.

JUDGMENT entered this 15th day of March, 1947.

ARCHIBALD R. WATSON,
Clerk.

274 **Testimony.**

SUPREME COURT—NEW YORK COUNTY

TRIAL TERM—PART IV.

EUGENE T. SINGER,
Plaintiff,
vs.

THE YOKOHAMA SPECIE BANK, LTD. and ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendants.

(Non-Jury.)

275

New York, September 24, 1946.

Before:

Hon. LLOYD CHURCH, Justice.

276

Appearances:

CRAVATH, SWAINE & MOORE, Esqs., Attorneys for Plaintiff. By: ALBERT R. CONNELLY, Esq., and LLEWELLYN D. SIMPSON, Esq., of Counsel.

EDWARD FELDMAN, Esq., Attorney for Superintendent of Banks. By: HENRY L. BAYLES, Esq., of Counsel.

(No appearance for defendant Yokohama Specie Bank, Ltd., the action against that defendant being severed and stayed.)

277

The Court: Before I begin the trial of this case I wish to disclose to counsel—I don't know whether this corporation, the Standard Vacuum Oil Corporation, has any relation to the Standard Oil Company of New Jersey, the Standard Oil Company of Indiana, or Socony Vacuum of New York. I am a stockholder in all those corporations.

Mr. Bayles: The Superintendent has no objection.

Mr. Connelly: Yes, it has a relationship to the Standard Oil of New Jersey, and Socony Vacuum Oil Company of New York. Both own stock of the plaintiff here, or rather, the assignor of the plaintiff here, Standard Vacuum Oil Company. There is no objection, of course.

278

The Court: You have no objection on the record?

Mr. Bayles: I have no objection.

The Clerk of the Court: Do you waive findings?

Mr. Bayles: No.

The Court: I would prefer findings in this case.

Mr. Bayles: At the close of the case I should like to request permission to submit a trial memorandum.

279

The Court: Certainly, both sides. It is stipulated by and between all counsel in this action that the fact that the Presiding Judge is a stockholder in the Standard Oil Company of New Jersey, Standard Oil Company of Indiana, and the Socony Vacuum Oil Company shall not be deemed a disqualification as far as hearing and determining the case.

(Mr. Connelly then made an opening statement to the Court on behalf of the plaintiff.)

(Mr. Bayles made an opening statement to the Court on behalf of the defendant Superintendent of Banks.)

280 *Eugene T. Singer, Plaintiff—Direct.*

EUGENE T. SINGER, the plaintiff, residing at 160 Henry Street, Brooklyn, New York, called as a witness in his own behalf, having been duly sworn, testified as follows:

Direct examination by Mr. Connelly:

Q. Mr. Singer, you are the plaintiff in this action? A. I am.

Q. And are you presently associated with the Standard Vacuum Oil Company? A. I am.

281 Q. In what capacity? A. Vice President and Director at the present time.

Q. For how long have you been associated with that company? A. Over 33 years with this company and its predecessor company.

Q. In 1941, Mr. Singer, what office if any did you hold with the Standard Vacuum Oil? A. In 1941 I was Treasurer of the company.

Q. For how long prior to that time had you been Treasurer? A. From the time it started in 1934.

Q. Until what time did you continue to serve
282 as Treasurer. A. Until January of this year.

Q. January 1946? A. 1946.

Q. By the way, what is the state of incorporation of Standard Vacuum Oil Company? A. Delaware.

Q. In 1941 and prior thereto, Mr. Singer, as Treasurer of the company, was it any part of your duties and functions to keep informed of the various accounting procedures in effect in the Standard Vacuum Oil Company and its various branch offices? A. Yes, sir.

Q. Where were the principal offices of Standard Vacuum? A. The principal offices was the New

York office. You want to know about the foreign field?

Q. No. I want to ask first about the principal offices in New York. Did it have a branch office in Yokohama, Japan? A. Yes, sir.

Q. Did it have other branch offices in other parts of the Far East? A. Yes.

Q. While you were Treasurer of the company, Mr. Singer, did you install in the offices of the Standard Vacuum Oil Company in New York and abroad, a standard accounting procedure? A. Yes, sir. 284

Q. And generally speaking, does that mean that all of the books of account, journal entries and subsequent books, ledger entries, are kept on a uniform basis throughout the company?

Mr. Bayles: I object to that question, your Honor, as to the procedure established in Japan, unless the witness can testify to his own knowledge.

Mr. Connelly: I will withdraw the question, thank you, Mr. Bayles.

285

Q. While you were treasurer of the company, Mr. Singer, did you have occasion to visit the branch offices of the company, and specifically the branch office in Yokohama, Japan? A. While I was treasurer?

Q. Yes. A. No.

Q. Have you ever been in the office in Yokohama? A. Yes, sir.

Q. When was that? A. The last time was in 1926.

Q. For how long a period of time did you remain there at that time? A. I was in Japan altogether very close to a year.

286 *Eugene T. Singer, Plaintiff—Direct.*

Q. Now, moving back to 1941, was it part of your duties as treasurer of the company, to keep yourself informed and advised as to the accounting procedures in effect? A. Yes, sir.

Q. In various branch offices of the company? A. Yes, sir.

Q. And did you so keep yourself advised and informed as to the accounting procedures in effect in the Yokohama office? A. Yes, sir.

Q. Now, going back then to my earlier question, Mr. Singer, will you now state whether or
287 not the accounting procedures in effect at the Yokohama office of Standard Vacuum were part of a standardized accounting procedure in effect throughout all of the offices of Standard Vacuum?

Mr. Bayles: One moment, sir. I don't believe the witness has qualified himself to say he knows of his own knowledge as to what the actual accounting procedure was in Japan of Standard, and I object to the question.

The Court: Did you during that period
288 receive regular reports from your Yokohama office?

The Witness: Yes, sir.

The Court: I overrule the objection.

Mr. Bayles: Exception.

Q. You may answer. You have the question in mind? A. No, sir.

Q. (Repeated by the stenographer.) A. Yes, sir.

Q. Was it part of that standard procedure, Mr. Singer, to have regular monthly reports of the operations of the Yokohama office sent to the New York office? A. Yes, sir.

289

Q. And did you as treasurer regularly receive those monthly reports of the Yokohama office affecting transactions with or concerning the New York office of Standard Vacuum? A. Could I ask—in connection with that, do you mean personally receive them, or the subordinates under me? I mean, under my jurisdiction.

Q. Either you as treasurer, or your assistants in your treasurer's department. A. Yes, sir.

Q. Now, was there during the year 1941, up to July of 1941, and prior to 1941, a regular course of business followed by the Yokohama office of Standard Vacuum with reference to obtaining foreign exchange? A. Yes, sir.

290

Q. Will you describe just what that procedure was?

Mr. Bayles: Pardon me, sir. Is this foreign exchange in Japan or New York?

Mr. Connelly: Yes, Japan.

Mr. Bayles: I object to the procedure obtaining as to foreign exchange in Japan, your Honor, unless the witness personally knows of his own knowledge. In that connection, your Honor, I would like to elaborate on this objection. I have no intention of being technical in this matter of raising objections, but the Superintendent has no means of knowing what occurred in Japan, and on this half million dollar transaction, it is vitally important that the plaintiff prove the actual payment in Japan, and then the agreements under which the payment was made. That is the reason for my objections as to the testimony of this witness.

291

292 *Eugene T. Singer, Plaintiff—Direct.*

Mr. Connelly: May I say, all that I am asking at this time is simply for a description of the general course of business with reference to foreign exchange, which the witness knows about as the result of receiving his reports from abroad. Merely to lay the background for and to make intelligible the specific transactions which we are here going to discuss.

The Court: I will receive it, subject to your connecting it. Exception to you.

293 Mr. Bayles: Thank you.

Q. You may now answer if you will, Mr. Singer. I asked about the general course of business followed by the Yokohama office with reference to obtaining foreign exchange in 1941 and prior thereto. A. In order to protect its position, importing oil——

Mr. Bayles: Pardon me——

The Court: You will have a standing objection.

294 Mr. Bayles: Also I would like to have the witness refrain from any customs of business, and just state the facts.

The Court: Just state the facts, yes, without any conclusions.

A. (Continuing.) The company entered into forward exchange contracts. The procedure for entering into them was to apply to a bank for a certain sum of money to be remitted, prior to the period for which it was to be remitted, and the rate of exchange. These contracts were then taken up, completed on the due dates, and the remittances

295

received in New York. That was generally the procedure in connection with forward exchange.

Q. Now, in connection with the following out of effectuating of that procedure, Mr. Singer, what were the various entries and records that would be made in the normal course of business to reflect the forward exchange transaction? A. There was a monthly report made. The office always received a slip of paper called a forward exchange contract.

Q. When you say "the office," what office are you referring to? A. Well, it is the policy with all of our offices dealing in foreign exchange, particularly the Yokohama office of the company. These contracts were then recorded on a form for that purpose, and this form was periodically, monthly as a matter of fact, sent to New York, so that New York would know the forward exchange business of the branch.

296

Q. That monthly report stated what in the way of information, what type of information?

Mr. Connelly: We will have it here. Do you object?

Mr. Bayles: I have no particular objection, but subject to my previous objection.

The Court: Certainly.

297

A. It shows the date the contract was made, the usance——

Q. Will you define "usance"? A. The time at which the contract was to be completed; the rate of exchange, and for our convenience the number of dollars involved, and the foreign currency equivalent; also the bank, the foreign bank with which the contract was made, or with whom the contract was made.

298 *Eugene T. Singer, Plaintiff—Direct.*

Q. Now, that report you mentioned, that monthly report of foreign exchange, was a report, if I understand you correctly, prepared by the Yokohama office and forwarded to the New York office as part of the regular procedure, is that right? A. That is correct, sir.

Q. What other books and records would reflect the transactions in question, or that type of transaction? A. You mean just the recording of the transaction, or the subsequent performance?

299 Q. Including both the making of the transaction and its subsequent performance? A. Our subsequent reports of the same nature would indicate when the remittance was made.

Mr. Bayles: Pardon me, I do wish to object to the substance of these reports.

The Court: Yes. They would be the best evidence.

Mr. Connelly: Under his objection, of course I won't ask the witness that.

300 Q. What records then, going on just to complete the general background and before getting into the specific transaction, Mr. Singer—what other entries or records would be kept, other than the monthly reports of foreign exchange to which you testified? A. Starting at the other end, when the company had the funds available, and it was management's desire to make the remittance, the bank would be advised by letter generally enclosing a check, advising or requesting that the remittance be made.

Mr. Bayles: As to any substance of any enclosure, I object to testimony as to what the certain enclosure contained, your

Honor. The best evidence requires production of that again. 301

The Court: Yes.

Mr. Connelly: I am asking only with reference to the regular course of business.

The Court: The system.

Mr. Connelly: You can't very well say a letter was sent to the bank, without saying what sort of letter it was.

Mr. Bayles: I do object to what that letter said.

The Court: The best evidence, of course, would be these records when they are introduced. This is just to give the system. 302

Mr. Connelly: Purely the system. That is all I am asking for at this time.

Mr. Bayles: Very well.

A. Shall I proceed?

Q. Yes. A. The usual bookkeeping and accounting entries were then made. The cash was credited, and the account maintained by the branch with New York was debited to represent the charge for the remittance.

At the other end—at this end—when the remittance was received, the check was received or funds received from a bank, the reverse counter-entries were made; the cash was debited, and for temporary convenience a remittance account was credited. When the charge was received from the foreign field, an offsetting entry was made, clearing the remittance account; and the transaction was completed. 303

Q. Now, again as a matter of general practice, which of those records initially prepared at the Yokohama office were in regular course of busi-

ness forwarded to the New York office? A. The transcript from the books of original entry to the extent that the entries affected New York office.

Q. By books of original entry, do I take it you mean journal? A. Cash, journal, sales.

Q. Yes. A. That was the report that came to the New York office, advising or giving the details of any items of crediting or charging New York.

Q. And then you have already testified to the fact that you received also the monthly reports of
305 exchange? A. Yes, sir.

Q. Those were records likewise prepared in Yokohama and forwarded to New York? A. Yes.

Q. Did you also receive periodically records of the status of accounts maintained on the books of Yokohama office pertaining to the New York office? I mean by that ledger accounts. A. Ledger accounts pertaining to New York office; we received a balance sheet.

Q. That is to say, a balance sheet covering all accounts on the books of Yokohama, or ledger accounts? A. All the general ledger accounts.
306 We did not get details of accounts receivable, for example.

Q. In regular course of business, did you ever receive copies of advices sent by the Yokohama office to a Japanese bank in connection with a cable remittance? A. Not as a regular course of business.

Q. Those records, I take it, would be maintained at the Yokohama office? A. Yes, sir.

Q. Have you been able, since the commencement of this suit, or prior thereto, to obtain any of the records maintained by the Yokohama office of the Standard Vacuum Company? A. No, sir.

307

Mr. Bayles: Except, your Honor, in connection with ability to obtain, I should like to ascertain what steps Mr. Singer followed to obtain these records from Japan.

The Court: Yes. What efforts did you make to obtain those records? That is the question.

The Witness: We are not allowed to make any efforts to obtain. We are prohibited from communication with Japan. We have had no opportunity of obtaining anything.

308

Mr. Bayles: In that connection, your Honor, I should like to point out that under General Ruling No. 11, communication is permitted with Japan under a license. That was the purpose of my objection—whether or not Standard applied for a license to communicate with Japan.

The Court: Did you apply?

The Witness: We have made several applications which have been denied.

Mr. Bayles: To communicate with Japan?

309

The Witness: To communicate on commercial subjects with Japan.

Q. I show you Plaintiff's Exhibit No. 1 for Identification, Mr. Singer, and ask you if you can identify that document? A. Yes, sir.

Q. Without stating its contents, will you just describe what it is? A. It is a cable advice from our Yokohama office of a certain transaction.

Q. So that it may appear a little bit more clearly on the record, it purports to be a copy of a cablegram from Yokohama to New York, dated

310 August 27, 1941, marked "Received August 28, 1941."

Mr. Connelly: I will offer that cable in evidence.

Mr. Bayles: I do object to this cable, your Honor.

By the Court:

Q. How did you receive this? A. The cables are delivered to our cable department in the reg-
311 ular way, and then because of the number of people interested, a transcript of the exact cable is made and distributed to the executives interested in the office.

Q. Wouldn't the original of this be in your office then?

By Mr. Connelly: (Continuing)

Q. Is the original cable received, or rather a copy of the cable received from the cable office, still in the possession of Standard Vacuum? A.
312 I couldn't answer that offhand without actually searching. In the normal course, these original cables, after they have served their purpose, are destroyed. They are so massive we didn't keep them. Whether this particular one is available, I couldn't tell without searching.

Mr. Connelly: I may state that I have asked for a search to be made for the original, and I have been informed that those cables were among those destroyed in the regular course of business.

Mr. Bayles: If Mr. Connelly will tell me that is an exact copy—I am not withdraw

ing the objection—I am not urging that it is not a copy of the cable received—but I do urge the objection, your Honor, as to statements contained in that cable as to the proposed intent of Standard to do something in the future. That is completely a self-serving declaration by the Standard, from one branch, to New York. Assuming that cable came from Standard Yokohama, as Mr. Connelly states——

Mr. Connelly: That is my understanding. 314

Mr. Bayles: In that connection, I call your Honor's attention to the word "will" in the cable, indicating a future action or contemplated action.

The Court: Mark it for identification; exception to the plaintiff.

(The paper already marked Plaintiff's Exhibit 1 for Identification.)

Q. Mr. Singer, did you or your office in August of 1941 receive from the Yokohama office reports of the character to which you have previously testified relating to a cable remittance of $557,561.25 dated August 29, 1941? A. We received a cable. 315

Q. Did you receive any of the reports to which you have previously testified, relating to that transaction? A. Subsequently received reports relating to it.

Q. I show you what purports to be a letter from the Standard Vacuum Oil Company, Yokohama, to Standard Vacuum Oil in New York, dated September 8, 1941, and its enclosures entitled "Monthly report of exchange quotations for the

316 *Eugene T. Singer, Plaintiff—Direct.*

month of August 1941—remittances," and "summary of exchange contracts" all for the month of August 1941, and ask you whether that is one of the reports to which you referred? A. Yes, sir.

Mr. Connelly: I shall offer that letter and its enclosures in evidence.

Mr. Bayles: In connection with these documents, your Honor, may I question the witness?

The Court: Yes.

317 *Preliminary cross by Mr. Bayles:*

Q. Mr. Singer, do you know whether this monthly report of exchange quotations, when it was made in Japan? A. What do you mean, when?

Q. Was it made at or about the time each of the transactions specified therein occurred? A. Oh, no. It is a summary received month after month.

Q. It is only a summary of existing contracts? A. That is right.

318 Q. In other words, this is a verbatim taking out of the entries of the register or journal at Yokohama? A. I don't quite get the connection of the journal and that.

Q. I will withdraw that question. Do you know of your own knowledge whether these monthly reports of exchange quotations and summary of exchange contracts which Mr. Connelly has produced here were made actually in the regular course of business by Yokohama? A. Of my own knowledge I know that if these people——

Q. I mean, I don't want to curtail you, but if your answer pertains to my question, go right

ahead. A. Would you mind repeating that question again?

(Question repeated by the stenographer.)

Mr. Connelly: I am not sure I understand that question. If you mean, would he see it prepared, we will concede he did not.

Q. Do you know of your own knowledge whether these represent an accurate statement of the books of the Yokohama office of Standard, of your own knowledge? A. Then I want to make a qualified remark. I don't want to answer unless you tell me to do so. 320

Q. You can answer any way you see fit. A. The only reason I know it is, it is a routine regular system of reports that are certified to and agreed to by a covering letter or by somebody in authority who says that this is the true statements. To that extent I know then that they are all right—based upon somebody else's certification that they are.

Q. Is that the only basis of your knowledge—someone else's statement? A. I would not have any knowledge of the actual piece of contract that was covered by it, other than this statement. 321

Q. Or the accuracy of these reports? A. The accuracy is covered by the covering letter of a party authorized to sign it.

Q. I see. You have no personal knowledge as to the accuracy? A. Not that I would know beyond that.

Mr. Bayles: I am afraid I will have to object, your Honor.

Mr. Connelly: May I ask one additional question?

322 *Eugene T. Singer, Plaintiff—Direct.*

By Mr. Connelly (Continuing):

Q. In connection with these reports, and specifically the report which you have just identified, does the Standard Vacuum Oil Company in New York make use of those various reports, either to make entries on its own books, or to confirm entries on its own books? A. Yes, sir.

The Court: I overrule the objection. I think it is admissible as a report received in the regular course of business.

323 Mr. Bayles: In that connection, your Honor, they are also offering a letter which is completely a self-serving declaration, and not made in the regular course of business, but simply enclosing certain reports.

By the Court:

Q. Do these letters always accompany the reports? A. If there is to be any special comment on them, generally it is one of two things: As a special comment there would be a letter
324 covering the details that needn't appear on the form. Otherwise, there would be a regular covering memorandum, if it is routine coming through, if there is anything not requiring any explanation.

Mr. Connelly: I might say there is nothing in this letter that has any interest for us, other than the first sentence which says, "We are attaching the enclosed reports;" so I will consent to have the second paragraph relating to another transaction entirely excluded from my offer.

The Court: All right. Delete the second paragraph.

Mr. Bayles: I take exception to your Honor's ruling.

(First sentence of letter received in evidence as Plaintiff's Exhibit 2; enclosure, consisting of three sheets received in evidence as Plaintiff's Exhibit 2-A.)

By Mr. Connelly (Continuing):

Q. Mr. Singer, turning to Exhibit 2-A, will you 326
explain if you will what the information on that sheet covers? A. Well, the first sheet merely gives a history.

Q. The first sheet being the one headed, "Monthly report of exchange quotations?" A. That is correct. It is exactly that. It is a quotation day by day in the area. The reverse side of the form headed "Remittances" gives the details of the remittances made by the station during the month.

Q. Now, that second sheet has remittances and shows, does it not, under date of August 29th, a 327
remittance to New York of $557,561.25—cost in yen, 2,378,928; rate of exchange 23.7/16, is that correct? A. That is correct, but it is the reverse side of the first sheet.

Q. I am sorry, the sheet headed "Remittances." A. That is right.

Q. And in that sheet do I understand correctly, are supposed to be entered all remittances during that month. A. Yes, sir.

Q. What is the next sheet, "Summary of exchange contracts, month of August 1941?", will you explain that? A. This form gives what hap-

328 *Eugene T. Singer, Plaintiff—Direct.*

pened during the month, of exchange contracts. It shows first the ones that were remitted during the month, against which remittances were made during the month; the balance outstanding; and if there have been any new contracts made, the new contracts would have been shown on this form. This particular sheet which you have given to me has no new contracts being made.

Q. This sheet then covers all of the contracts, the forward exchange contracts outstanding at the beginning of the month in question, is that
329 correct? A. That is correct.

Q. And it also shows the amount remitted under those contracts during the month? A. That is correct.

Q. And then the balance outstanding of yen? A. That is right.

Q. Now, does that sheet or summary of exchange contracts contain reference to any such contracts relating to this cable remittance of $557,561? A. Yes, sir. It shows the four contracts which comprise that remittance. It shows that these four contracts were remitted against.
330 Q. Are those contracts to which you refer contracts numbered 7, 11, 12 and 13? A. Yes, sir.

Q. You also testified, Mr. Singer, that it was part of your regular course of business to receive from your Yokohama office a transcript of the journal entries made by the Yokohama office affecting New York contracts; is that correct? A. Yes, sir.

Q. Did you receive a report of such journal entries, or a journal entry, with reference to this cable remittance of $557,561.25? A. When you say "I", do you mean the office?

Q. Or your office? A. Yes, sir.

Q. I show you a document headed "Entries to New York office, August 1941," and ask you whether that is the transcript to which you refer? A. Yes, sir.

Mr. Connelly: I will offer that in evidence.

Mr. Bayles: May I question the witness about this document, your Honor?

The Court: Certainly.

Preliminary cross examination by Mr. Bayles: 332

Q. Mr. Singer, this "Entries to New York office" is simply a summary of certain entries appearing on the books in Japan? A. As they affect New York office.

Q. But it doesn't take the books as they actually are in Japan, but going through them and making a summary of the books in Japan, is that correct? A. Not entirely, sir. It could be; the extent "summary" is used is only when it is information. The details are so voluminous that it would not be of interest, and it is only sufficient to give New York the information it requires. 333 Other parts they will give the full details. Just the transcript right from the voucher.

Q. In other words, at times they only take from the records and insert it in here, is that right? A. For a special type of transaction.

Q. So you cannot say that this is an exact statement or a duplicate of entries appearing on the records in Yokohama, can you? A. Without supporting details to a voucher, I think that I could say that it is.

Q. You are not certain as to whether each one of these entries is an exact repetition of an entry

334 *Eugene T. Singer, Plaintiff—Direct.*

appearing in Yokohama, that complete entry? A. It may not be an exact duplicate, that each "I" is dotted and each "T" is crossed or that there may be some underlying scraps of paper, of which this entry is the summary of those scraps of paper.

Q. That is the point I am making. This is simply a summary of an entry in Japan, is that correct? A. No. I couldn't give you a categorical answer to that to every entry. You would have
335 to question me as to each entry, so to what I thought that was. I couldn't give you that as a broad statement. Could I state what I mean?

Q. Surely. A. For example, if you wanted a look at a sales summary, the sales summary closing out the credits to New York office would be in large sums of money. But you wouldn't go down to the details to each case of oil, or every gallon of oil sold to each customer in the area. Now, the sales sheets which support the entry give all those details, but obviously, New York would't want it.

Q. Well, these entries apparently were made by someone who went over the books and records
336 and made extracts or summaries from those books and records? A. Sometimes it may have been a summary and sometimes it may be an exact record of the journal entry itself.

Q. In other words, these entries were not made at the time the original transaction occurred or at about the time, they were made subsequently, is that correct? A. Well, how long a period of time would you say is "subsequent"?

Q. How long after the particular entries that were reflected? A. Well, as near as possible all entries are spread on the books as soon as practi-

cally possible following the record of the transaction. That might in one case take ten minutes.

Q. Yes. A. And in another case four or five days.

Q. Can you tell me, Mr. Singer, how long after the original entries were made on the records were these summaries to New York made? A. Generally those run concurrently, so that there is no delay in getting the reports off to New York. I mean, after a journal has been prepared for a day, some clerk will sit down and would take all 338
the items affecting New York office, and start transcribing them on these sheets. I wonder if it would be helpful if I told you the purpose of that.

Q. The only further question on this thing is that this particular clerk you say doesn't make a complete statement of the entry but only makes a summary in certain cases? A. I have got to repeat to you, depending on how voluminous is the detail, and to what extent New York requires the information.

Q. I see. Do you know of your own knowledge as to the accuracy of these particular entries? 339

Mr. Connelly: I am going to object to that, if the Court please. The witness has testified he was not present at the making of these reports. At the same time he has testified these reports were sent to him in regular course of business. Obviously he has no personal knowledge of the making of the entries other than the fact that he received them.

The Court: I think the question is proper on cross examination as to the weight to be

340 *Eugene T. Singer, Plaintiff—Direct.*

given to these documents; but I think they are clearly admissible under 374 A of the Civil Practice Act.

Mr. Bayles: Exception then, your Honor.

Mr. Connelly: I will offer the entire report.

(Five sheets received in evidence as Plaintiff's Exhibit 3.)

By Mr. Connelly: (Continuing)

341 Q. Now, the only entry concerning the transaction under consideration here, Mr. Singer, on Plaintiff's Exhibit 3, is the first one; is that correct? A. That is correct, sir.

Q. Did you in 1941, Mr. Singer, receive as part of the regular course of business of Standard Vacuum, reports from the Yokohama office indicating among other things its cash balance with Japanese banks at the close of each month? A. Yes, sir.

Q. I show you a document entitled "Yokohama Station—month ending July 31, 1941—general
342 ledger trial balance," and ask you whether that is such a report for the month of July 1941? A. Yes, sir.

Q. Now, does that report which you have in your hand, Mr. Singer, contain a breakdown of the cash account, showing the various accounts with which the cash was deposited? A. Yes, sir.

Q. And does that show or indicate the balance on deposit with the Yokohama Specie Bank by the Yokohama office of Standard, as of July 31, 1941? A. Yes, sir.

Mr. Connelly: I shall offer that document in evidence.

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Mr. Bayles: I do object to this document, your Honor—first as to the relevancy. It goes back to July 31, 1941, and I don't quite see what relevancy the balance of Standard-Yokohama with Yokohama Specie Bank on July 31, 1941 could have in this case.

Mr. Connelly: I must say, if the Court please, that I have some difficulty with the relevance of any question affecting the payment of yen in Japan to the issues involved here. Nevertheless, the Superintendent of Banks has raised such issue, and has contended that it is of significance here to establish the payment of yen in Japan. Simply to avoid any question on that score, I propose to introduce these records covering the balances in Yokohama Specie in Japan at the end of July, and at the end of August—showing that the funds were there prior to the cable remittance, and that they were sufficient funds to pay the cable remittance; and that at the conclusion of the month the balance remitted represented substantially the difference between the deduction from the full balance of the amount of yen equivalent of the cable remittance.

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Mr. Bayles: As to relevancy, your Honor, I don't see how the balance at the end of each month—July 31st, and as Mr. Connelly tells me, August 31st—can in any way corroborate a certain payment in August, or alleged payment in August 1941. It is quite possible—it doesn't purport to be a balance of daily deposits and with-

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drawals, but only a statement at the close of the month.

Mr. Connelly: Of course, if the Court please, we are confronted with some difficulty in the matter of records, by reason of the fact that records in Japan are unavailable. Obviously, if we had available or had in New York the detailed vouchers underlying any transaction, we would of course produce those. They are not available, and we offer this as the best available
347 evidence.

The Court: Overrule the objection, with an exception.

Mr. Bayles: Exception.

(Two sheets received in evidence as Plaintiff's Exhibit 4.)

Q. I also show you, Mr. Singer, a document entitled in the same manner as Plaintiff's Exhibit 4, except for the month of August 1941, and ask you if that is the report to which you referred for
348 the month of August 1941? A. Yes, sir.

Q. Does that likewise show the balances on deposit in various Japanese banks by the Yokohama office of Standard at the end of August 1941? A. Yes, sir.

Mr. Connelly: I offer that in evidence.

Mr. Bayles: I make the same objection.

The Court: Same ruling; exception.

(Two sheets received in evidence as Plaintiff's Exhibit 5.)

Q. Just one or two additional questions, Mr. Singer, on this matter of the books and records.

Do you, as part of the regular course of busineses, receive from your Yokohama office—using "you" in the sense of Standard Vacuum Treasury Department again—reports from time to time of a monthly reconciliation of the bank balances of the Yokohama office? A. We do, at periodical times.

Q. I show you a document entitled "Monthly reconciliation of bank balance, Yokohama Japan Station, September 1941," and ask you whether that is such a report? A. Yes, sir.

Q. Do you also receive as a part of your regular course of business from the Yokohama office, con- 350
firmation from the Japanese banks with which the Yokohama office has moneys on deposits, of the state of its balance at given times? A. Yes, they are generally attached to this report.

Q. I show you what purports to be a letter from Yokohama Specie Bank, Ltd., dated October 1, 1941, addressed to Standard Vacuum, Yokohama, and ask you whether that is the confirmation to which you refer? A. That is the type of confirmation we receive.

Q. Both of those papers contain a reference, do they not, to the balance with Yokohama Specie 351
Bank, Ltd. at the close of business on September 30, 1941? A. Yes.

Q. The one prepared by the Yokohama office of Standard, and the other coming from Yokohama Specie Bank, Ltd.? A. Yes.

Mr. Connelly: I offer those two documents in evidence.

Mr. Bayles: If your Honor please, I don't know the signature of this manager in Yokohama and I am not taking issue with that; but I do object, your Honor, to the relevancy of the purported balance of

352 *Eugene T. Singer, Plaintiff—Direct.*

Standard-Yokohama with Yokohama Specie Bank, Yokohama, on September 30, 1941, more than a month after the alleged transaction here.

Mr. Connelly: May I explain the purpose of it? It is not particularly significant. We have established through the records of Standard Vacuum in Yokohama the status of its cash accounts at the end of July and end of August 1941, covering
353 the period during which the cable remittance was made. Now, those records of course are Standard Vacuum's records. Here is a record which confirms the Standard Vacuum record, by Yokohama Specie Bank. It merely is sewing up any possible loose end on that score, any question that there might be some inaccuracy on the books of Standard Vacuum in Yokohama.

The Court: Same ruling, with an exception.

(Letter received in evidence as Plaintiff's
354 Exhibit 6; statement as Plaintiff's Exhibit 6-A.)

Q. Mr. Singer, did the Standard Vacuum Oil Company of New York receive any written advice from the New York Agency of Yokohama Specie Bank, Ltd., with reference to this cable remittance? A. Yes, sir.

Q. I show you what purports to be a letter from Yokohama Specie Bank, Ltd., New York Agency, dated August 29, 1941, and ask you whether that is the letter to which you refer? A. Yes, sir.

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Mr. Connelly: I offer that letter in evidence.

Mr. Bayles: No objection.

(Letter received in evidence as Plaintiff's Exhibit 7.)

The Court: We will take a recess in this case until 2:00 P. M.

AFTERNOON SESSION.

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EUGENE T. SINGER, resumed the stand and testified further as follows:

Mr. Connelly: May it please the Court, I offer in evidence at this time a copy of a proof of claim filed by Standard Vacuum Oil Company with the State Superintendent of Banks, which proof of claim I understand to be conceded was filed on November 21, 1942, and was subsequently rejected by the Superintendent on February 11, 1943.

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Mr. Bayles: I have no objection, your Honor, to the marking of this claim as proof of claim filed. But I assume Mr. Connelly is not offering this proof of claim to prove any of the contents of the statements in the proof of claim, but only to the fact that the claim was filed.

Mr. Connelly: It is offered solely for the purpose of establishing compliance with the provisions of the Banking Law.

The Court: It may be marked with that limitation.

(Proof of claim received in evidence as Plaintiff's Exhibit 8.)

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By Mr. Connelly: (Continuing)

Q. Mr. Singer, I show you an instrument purporting to be an assignment from Standard Vacuum Oil Company by P. W. Parker to yourself, dated August 10, 1943, and ask you whether you can identify the signatures of Mr. Parker and yourself? A. Yes, I know them both.

Q. I also show you what purports to be a certified copy of resolution adopted at a meeting of the Board of Directors of Standard Vacuum Oil
359 Company held on August 4, 1943, with reference to such assignment and ask whether you can identify the signature thereon of H. H. Pethick, secretary? A. I do. I know him.

Mr. Connelly: I offer in evidence the assignment and certified copy of the resolution of the Board of Directors.

Mr. Bayles: I have no objection on those, your Honor.

(Assignment received in evidence as Plaintiff's Exhibit 9; resolution received in evidence as Plaintiff's Exhibit 10.)

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Mr. Connelly: In connection with Plaintiff's Exhibit 8, being a copy of the proof of claim, I made a statement that it was conceded that the proof of claim was filed November 21, 1942, and was rejected on February 11, 1943. My attention has been called to the fact that counsel for the defendant did not expressly assent to that stipulation.

Mr. Bayles: I so concede.

Mr. Connelly: That is all. You may examine.

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Cross examination by Mr. Bayles:

Q. Mr. Singer, are you still treasurer of Standard Vacuum? A. No, sir, not now.

Q. How long haven't you been treasurer. A. January.

Q. Of which year? A. 1946.

Q. Are you associated in any capacity with Standard at the present time? A. Yes, sir.

Q. In what capacity? A. Vice-president and director.

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Q. Now, are you familiar with the books and records kept by the New York office of Standard? A. Yes, sir.

Q. Will you kindly let me know, please, prior to the freeze what entries would be made upon the records of the Standard in New York upon payment of a telegraphic remittance here in New York? A. An entry would be made charging the cash account in the regular deposit procedure, and a credit to an account known as the remittance account. This was a temporary suspense account. Upon receipt of the charge from the foreign field, such as the entry you referred to this morning, a clearing entry would be made, the report from the field being the official New York records for the charge. The entry in that connection would be then a debit to the remittance account and a credit to the management account for the field.

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Q. For the field. But did you in any way confirm to Standard Yokohama the particular entries you made on your records in New York? A. We would no doubt have made an entry on the records of New York at that time.

Q. No. Prior to the freeze, was it your normal procedure— A. Oh, yes.

Q. —to confirm? A. We gave what we call an acknowledgment.

Q. As soon as an entry was made? A. As soon as we received the money.

Q. What is the type of acknowledgment you would give them? If you have one in court, I would like to see the form. A. I don't think we have one in court. I can give you the purport.

Q. That would be all right. A. Just an ordinary piece of paper, generally about 8½ by about—
365 5 by 8½, just saying, "We hereby advise that we have today received a remittance so-and-so, such-and-such an amount, from such-and-such a bank."

Q. And you would send that statement upon receipt of the check from the New York Agency of Yokohama Specie Bank? A. Just an acknowledgment that we received the money, that is right.

Q. Now, did you notify the Yokohama office of any other entry made upon your records? A. You mean in connection with a remittance?

Q. That is right. A. No, no other?

Q. Well, when you made the journal entry, did you notify them of any entry? A. No, because
366 then it became a clearance upon our own books.

Q. Mr. Singer, did you know that around July 25, and prior to July 28th, all foreign exchange contracts were cancelled in Japan? A. Purported to have been. We just got the cabled information. I don't believe "Cancelled". I think "Suspended" was the word.

Q. And that a government license was required to reinstate them; is that correct? A. Government license from where?

Q. Japanese Government license? A. I don't think we knew what procedure was going to be required in Japan.

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Q. Are you certain of that, you don't know or have no knowledge or information as to whether or not, in order to reinstate all these foreign exchange contracts, a Japanese Government license was not required? A. I don't think it was a license, sir. I think it was just permission to reinstate them. I don't think the contracts—as we understood it—the contracts were not cancelled, using the word "cancelled". They were suspended.

Q. But you needed permission to reinstate them, is that correct? A. That is right.

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Q. You have testified before as to the receipt of Plaintiff's Exhibit No. 3 (indicating) by the New York office? A. Yes, sir.

Q. Of Standard. Is there any information that you can supply as to the date that particular record or sheets was received from Yokohama? Look on the other side. A. Yes. This would be the regular stamp.

Q. Will you give the Court, please, the date it was received? A. October 27, 1941.

Q. Now, was any entry made in any book of the New York office of Standard in connection with the first item under this Plaintiff's Exhibit 3, referring to a remittance of $557,561.25? A. There was an entry made.

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Q. On the books of Standard, New York? A. Yes, that is right, New York office of Standard Vacuum.

Q. Do you have that entry here? A. No.

Mr. Bayles: Will you produce, according to subpoena, any entry made?

(There was a conference between counsel.)

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Mr. Bayles: I will defer that because counsel just told me they are supplying further proof on that.

Q. On August 29, 1941, was any entry made on the records of Standard New York as to this particular $557,000 transaction? A. Nothing in the books of account. Most records were made in the treasurer's office in connection with the remittance.

Q. I am asking on the books of the Agency. A. Not on the accounting books. You mean——

371 Q. Pardon me; books of the New York office of Standard. A. No.

Q. On Plaintiff's Exhibit 3, Mr. Singer, I show you pencil notations underneath the $557,000 item. Are you familiar with that notation? A. Yes.

Q. Is it true that on or about October 27, 1941, entries were made upon the records of Standard New York, but that particular entry was debited and omitted? A. Omitted for the time being.

Q. No. Was it omitted? A. Omitted for the time that this sheet was vouchered.

Q. That is right. No entry was made at the

372 time this particular sheet was received by the Standard New York? A. Because there was no license.

Q. We will come to that. A. That is right.

Q. No entry was made? A. That is right.

Q. And this particular $557,000 item was deducted from the total of items referred to in Plaintiff's Exhibit 3? A. At the time this sheet was vouchered.

Q. That is right. As a matter of fact, wasn't that item deducted from the grand total appearing on the last sheet of Plaintiff's Exhibit 3? A. That's right. That's right.

Q. Do you have any record made in the regular course of business, maintained by the New York office of Standard, showing what the exact yen balance was of Standard-Yokohama, with Yokohama Specie Bank, Yokohama, on August 29, 1941? A. No record in New York would show that.

Q. Do you have any record in New York as to what the particular daily balance was of Standard-Yokohama with Yokohama Specie Bank, Yokohama, if any, for any particular day during the 374
period from August 1, 1941 until December 8, 1941? A. The ones that come through at the end of the month. I can tell you what the balances were from this report, the monthly reports, from the field of the last day of the month.

Q. Only on the last day of the month; but other than that you have no daily balance record? A. No, sir.

Q. What is the last record you have received from Japan, showing the daily balance at the close of any particular month? A. Subject to correction, I would think it was the October closings; but it may have been the September. I am sure 375
we didn't get anything for November.

Q. Or December? A. Obviously not December.

Mr. Connelly: I am informed September 30th is the last statement. That is the one which already has been received in evidence.

Q. Do you have any information as to what happened to this balance which Standard-Yokohama had in Japan? A. No knowledge of what happened to it. We don't know. We haven't had any communication.

376 *Eugene T. Singer, Plaintiff—Cross.*

Q. Do you know whether or not that particular balance has been seized, or was seized by the Japanese Government? A. If you ask if I know——

Q. Yes. A. I have every reason to believe it was seized by some government authority out there.

Q. Do you know whether or not this $557,000 odd was ever recredited on the books of the Yokohama Specie Bank, Yokohama, at any time up to December 8, 1941? A. Not as far as I know.

377 Q. You don't know whether it was or was not, is that correct? A. Well, I wouldn't know except from general information that I received. But I have every reason to believe it was not.

Q. But you have received no information at all since October or November, or whatever it was—September, rather—you have no information at all? A. In the way of reports.

Q. That is right. A. No information by way of reports. But we have seen men who were interned in Japan.

Q. And are they here in the United States? A. One of them is, but the rest of them are back in

378 the field now.

Q. What is his name? A. The man in the United States?

Q. Yes. A. C. E. Meyer.

Q. Was he formerly connected with Standard-Yokohama? A. Yes, sir.

Q. Do you see him in court? A. Yes, sir.

Q. Are there any other gentlemen who were employed by Standard-Yokohama prior to the war, who are now here? A. In the United States?

Q. Yes, that is right. A. You are asking me to go through a whole staff of people offhand.

Q. If you know offhand. A. I don't know of anybody in our office at the minute. I wouldn't state that that there isn't somebody here.

Q. Was Mr. Meyer connected with the accounting department of Standard-Yokohama? A. He was the head of the whole show out there.

Q. Accounting department? A. No. The whole office. He was the general manager for the whole territory. He was over the accounting and everything else.

Q. I see. These particular sheets which have 380
been marked in evidence, representing papers forwarded to New York from Yokohama—were they checked as to accuracy after they were received by Standard-New York? A. Accuracy as to computations.

Q. Accuracy as to contents? A. There was nobody here could check contents, other than the computations of it.

Q. In other words, the statement "computations" that you refer to means the actual figures? A. That is right.

Q. And that is all they could check in New York? 381
A. That is all they could check in New York.

Q. As to what the particular transaction involved, there is no way that New York could check it? A. No, sir.

Q. Do you know of your own knowledge as to the meaning of that word "usance"? I didn't quite get it on your direct, the meaning of the word "usance"? A. The type of remittance that is being made.

Q. And does that give the duration of the remittance? A. Not generally. Generally the type, whether it is so-called T.T., whether it was the

382 *Eugene T. Singer, Plaintiff—Cross.*

so-called demand draft, whether it was a 30-day bill—the type of transaction.

Q. Well, do you know whether or not there were any particular time limitations on these foreign exchange contracts? A. Foreign exchange contracts varied.

Q. No; as to time limitations. A. That is it, but they vary. There are various types of foreign exchange contracts. Sometimes they have time limitations that are an extended period; sometimes they are for a specific day. These particu-
383 lar ones in Yokohama were generally described as being any time within that particular month.

Q. In other words, the transaction had to be completed within that month. A. Supposed to have been completed.

Q. And in the event the transaction was not completed within that month, the particular foreign contract was terminated, is that correct? A. Oh, no. You would always have the right to negotiate with the bank and have the terms changed, the period of it.

Q. But the original contract provided for com-
384 pletion within that particular month? A. Supposed to have been completed within that month.

Q. And completion, we understand each other, means payment? A. Oh, no. Oh, no. The taking up of the contract at the one end. The man out in Yokohama couldn't be held responsible for what took place at this end.

Q. Do you know of the particular requirements of government permit which was obtained in Japan, the government permit which was obtained in Japan in connection with foreign exchange contracts generally? A. Are you talking about these specific ones?

Q. No, generally, please. A. I know about what they were just prior to the freeze, generally.

Q. All right. Can you give a statement as to what they were generally prior to the freeze? Government's permission, we are talking about. A. How far back would you like me to go?

Q. Just a few months. A. Just prior to the—subsequent we will say to the so-called "incident" in Japan, where the real Japan controls came into effect; is that what you mean?

Q. That is right, yes. A. The office out there— 386
the start of the transaction was where they wanted to import some oil. They got permission from the authorities, I think called the Fuel Department, or some such name as that, to import this oil. This license or right to import oil carried with it the right to foreign exchange. This was a series, a long series of negotiations between our office out there and the authorities involved, what the value of the oil was to be, what the remittance value of the oil was to be. And after these negotiations, the amount, the quantity to be imported, the approximate quantity was approved and the remittance value of the oil was approved. 387

With this information in hand, the office was then in a position to go to the bank and obtain the forward exchange. Now, coupled with this right to import and the right to exchange, the authorities and our people negotiated as to when the funds would be approximately available.

After the oil was imported, after it was disposed of and collections made, they tried to make an estimate when the funds would be available and it was this process of determining approximately when the funds would be available that determined the time at which the exchange could be taken up.

388 *Eugene T. Singer, Plaintiff—Cross.*

It was by that process that these various months for the time of remittance were established.

Having gotten the permit and gone to the bank, then this forward exchange contract which we have described, was entered into and then recorded on the records as to what the contract was, the amount involved, and the rate of exchange and so forth, and the period in which it was to be remitted.

Q. In other words, if I am correct, Standard
389 was selling oil in Japan? A. That is correct.

Q. And this oil came from the Dutch East Indies? A. Well, it could have come from anywhere. It could have come from the Dutch East Indies, the United States, it could have come from the Persian Gulf—from various sources.

Q. The particular oil and petroleum products referred to in Plaintiff's Exhibit 2-A, those particular petroleum products which are listed under those first contract numbers, 7, 11, 12 and 13—A. That is right.

Q. Those particular petroleum products came from the Dutch East Indies, is that correct? A.
390 Oh, no, sir. I couldn't tell you from this record exactly the source of the oil. I could make some surmises from the general source—for example, the words used in here "machine oil," I can assure you did not come from the Dutch East Indies. That is probably United States Oil. That is lubricating oil.

Q. But in any event, Standard was selling this oil to Japan, and as part of the same transaction, is it correct that they wanted to be sure that they were going to get paid dollars in New York? A. That our people out there—we were going to be paid dollars.

Q. That is right. Dollars. A. Yes.

Q. In connection with these particular four exchange contracts referred to in Exhibit 2-A, have you got any idea as to the terms of any government license or permit which was granted in connection with those four contracts? A. Japanese permits?

Q. Yes, that is right. A. Other than the procedure which I have described to you. I haven't got the specific contracts. We wouldn't have those in here.

392 Q. Do you have the specific provisions as to any limitations that might be contained in such a Japanese government permit? A. I don't quite get what you mean by "limitations."

Q. As to time; as to completion. A. I wouldn't have any of that. We wouldn't have any of that detail in New York. That was current business out there.

Q. Mr. Singer, I want to refresh your recollection if I can about these foreign exchange contracts in Japan, and as to their status on and after July 28, 1941. In that connection, I show you a cable which your attorney has handed to me, 393 received by Standard Vacuum in New York from Standard Vacuum, Yokohama, and ask you to be good enough to read it.

Mr. Bayles: In th' connection, I offer in evidence cable dated July 28, 1941.

Mr. Connelly: No objection.

(Received in evidence as Defendant's Exhibit A.)

Q. Mr. Singer, can you now state whether or not Standard New York was advised that these foreign

exchange contracts were cancelled in Japan? A. That cable says "cancelled." I tried to bring out when you first asked me that the word "cancelled" was not the true sense of what happened to those contracts. It says in that cable that new applications would have to be made, indicating that new contracts would have to be made. As I understand from our people, the actual effect was a suspension because the contracts——

Q. Pardon me. Go right ahead. No objection.

395 A. It was a suspension, because no new contracts were made. The old contracts were reinstated.

Q. Do you have any proof as to the exact terms of the reinstatement of these old contracts that you refer to? A. I don't think that I personally could tell you where that proof is. Probably some of the other people can tell you.

Q. You don't know whether or not these particular reinstatements provided for completion of the contracts within a certain period? A. I can only tell you my understanding of it from—I think it was correspondence, and certainly with talks, that the original contracts were reinstated

396 in accordance with their original terms; and there are subsequent cables that up to a certain point at least, even as far as November, that the authorities intended that those contracts would under certain conditions be fulfilled—the original contracts.

Q. But you have no personal knowledge, coming back to that, as to the exact terms of the reinstated contracts? A. Not the terms. I have no knowledge of all the negotiations that took place in Japan toward their reinstatement.

Q. But do you have any knowledge of these conditions that you just spoke about? You said

they were reinstated under certain conditions. A. Well, I have a knowledge also from that paper that is in evidence here—the cable as to what the conditions were—as to when they would permit further remittances.

Q. I see. That is the only knowledge you have? A. Those cables and other correspondence pertaining to the subject.

Q. Have you any check of Standard-Yokohama, drawn against any account of Standard-Yokohama, in Yokohama, in Yokohama Specie Bank there? A. Not in the United States. 398

Q. Have you any record in the United States showing any debiting of an account which Standard-Yokohama had with Yokohama Specie Bank on August 29? A. We wouldn't have any details of that nature in the United States.

Q. Now, in connection with these particular claims, Standard also filed proofs of claim, or, rather, you as assignee of Standard, filed proofs of claim with the Alien Property Custodian, is that correct? A. That is correct.

Q. For the same $557,000? A. And some other items. 399

Q. It included this particular item, is that correct? A. That is correct.

Q. Now, do you have any memorandum in your possession as to any conversation as to the August 29th remittance? A. Do I personally have any memorandum?

Q. Memorandum. A. No, I wouldn't have any written memorandum. The men I was dealing with kept reporting to me what the situation was, and the results of our conversation were not written down.

400 Q. Did you have any written memorandum? A. No. I didn't write any memorandum.

Q. At all, on August 29th? A. Not as far as I can recall, I wouldn't say I did. I may have made a pencil notation somewhere but not as far as I recall.

Q. Now, when this particular item, $557,000, was excluded in the journal entry, what notice did you give Standard-Yokohama that you were excluding that particular item?

401 Mr. Connelly: I will have to object to the question as assuming facts not in evidence. There is no testimony that it was excluded from the journal.

Mr. Bayles: May I have the journal, please?

Mr. Connelly: The testimony is, it was not included in the total posted to the ledgers.

The Witness: I said there was a subsequent entry made.

Mr. Bayles: I will reframe the question.

402 Q. On October 27, 1941, when Standard-New York made entries on its books in accordance with Plaintiff's Exhibit 3—A. Yes.

Q. —the very first item of $557,561.25 was deducted from the total? A. Excluded from the total.

Q. The word is "deducted". A. Yes. But I am using the word, it was excluded from the total that was vouchered.

Q. What notice did you give Standard-Yokohama that you were either deducting or excluding that particular amount? A. We gave them none.

It was not necessary under our system. We gave them no notice. We never gave them any notice of what entries we made on our books.

Q. Even though the entries made on your books in this case you say did not tally with the entries made upon their books? A. We wouldn't have to advise them of that. That is the reason subsequently the entry was made, under the license.

Q. I am asking you now whether on October 27, 1941, you did not notify Standard-Yokohama that your books did not correspond to their records? 404
A. No, sir. We would not notify them.

Q. That was in accordance with the general business practice of Standard-New York? A. That is right. There wouldn't be any occasion to.

Q. No occasion for you to notify the remitting office that your records did not tally with their records? A. If they didn't tally, if there was an unexplained reason, we would take it up with them to try to trace it.

Q. Didn't you notify them immediately as to the big discrepancy there? A. No. We knew the reason for the discrepancy.

Q. You kept that to yourself and didn't notify 405
the remitting branch? A. We didn't have to advise them.

Q. Yet you say that the records of the remitting bank in your office were kept in the regular course of business? A. Will you repeat that, please?

Q. And yet, on your direct examination, you stated that the records of your office and the Standard office in Yokohama were kept in the regular course of business? A. Were kept in the regular course of business.

Q. Is it your interpretation of the regular course of business to have the branch office

406 *Eugene T. Singer, Plaintiff—Cross,*

accounts tally with the main office accounts in New York? A. Not all the time. No, sir, it is impossible with a lag of distances and mails. There was always a reconciliation between them.

Q. I am trying to find out when for the first time did you attempt to make a reconciliation with Standard-Yokohama? A. We were never able to make a reconciliation with Standard-Yokohama until we tried to close the books after we had the war loss, after December 7th.

407 Q. That was the first time you attempted to make a reconciliation? A. Oh, no, no. I think I would have to go into the whole system and advise you the whole system of accounting between branches and the head office, to get clearly over to you what took place.

Q. I am perfectly willing to let you do that, Mr. Singer, but right now what I am trying to find out is this: On a certain date, Standard-Yokohama debited the New York office with $557,000. A. Right.

Q. And on October 27th that particular memorandum of that debit was received by Standard

408 New York? A. Right.

Q. I am asking you whether Standard-New York by cable, by mail, letter, or any type of advice whatsoever, notified Standard-Yokohama that this particular debit was not acceptable to them for any reason whatsoever? A. No, sir. There would be no occasion for doing that. You keep repeating "in the normal course of business." If it had been the normal, ordinary course of business, the whole total of that sheet becomes, when it arrives in New York, the official records of the company in New York as dealings for charges affecting the field.

Now, because of a very peculiar circumstance that existed, this particular item, because it was already the subject of discussion of license, was excluded from this total. We had a license to make the other entries; a license was required to make these entries. Subsequently, and no doubt before we could close down the books and establish a loss, it was necessary to bring the so-called New York office account in line with the corresponding entry which we call a management account; in order to bring that in line, it was necessary we make the entries that correspond to that; and in order to do that, it was subject to Treasury license, and it was at that time this entry was made which brought it all in line with this, so there was no occasion to tell Yokohama we had done something, an entry they weren't affected by. 409 410

Q. I quite agree with your statement you attempted to make—— A. (Continuing) But in the ordinary course, you repeat—there was no necessity of making a reconciliation. It is always there.

Q. Let us assume for the sake of discussion, Mr. Singer, that Standard-Yokohama would send to Standard-New York, entries to the New York office in the normal course of business, and one of those entries didn't tally for some reason or other prior to the freeze, with what the New York office of Standard's records would show. What would you ordinarily do? A. There is no such thing that it couldn't tally with what the New York office records would show. If that sheet had come through, bearing this necessity for a license to make these entries—that whole sheet, you will notice on the right there, everything has an ac- 411

412 *Eugene T. Singer, Plaintiff—Cross.*

count on it, it would have been vouchered some place.

Q. You don't understand my question. Assume there had been some discrepancy prior to the freeze. A. I am trying to tell you, sir, there could not be a discrepancy. If Yokohama charged us with "X" number of dollars, we will voucher and credit the management account with "X" number of dollars, and charge the various accounts. Now, if it is an item New York didn't understand, or
413 didn't know what to do with, they would have put it into some kind of a suspense account, and they would have written about it, "What are we supposed to do about this?" But it would have been vouchered. The only thing that wasn't vouchered in its entirety was this whole question of licensing for entries.

Q. I am going to ask you this question then: What was the reason that this particular item was deducted, in your own words? A. Because the question—in the ordinary procedure, it wouldn't have been necessary, as I explained to you before when you asked me about the pro-
414 cedure in connection with remittances. This was the entry which would have been the contra-offsetting for the credit that would have been in the remittance account, had the check been received; that is when the whole amount would have been credited to Yokohama. Now, the check had not been received, it was still a matter of trying to get a license from the Treasury for the New York Agency to pay and for us to receive. That license was not forthcoming; but that not being forthcoming, we just wanted to be perfectly safe and not make an entry on our New York books pertaining to that remittance while the matter was pending.

415 Subsequently—you just asked me when it came to balance the accounts, to have the accounts in New York in line with the accounts in the Branch—a special license was obtained to make such an entry. That was when that item was vouchered.

Q. Well, did you notify Standard-Yokohama of the obtaining of a license of all the other items on this Exhibit 3? A. They weren't involved. No, sir.

Q. Of the obtaining of a license? A. They weren't involved. We never told them.

416 Q. Did you notify Standard-Yokohama of your application for a license in connection with the first item of $557,000? A. I doubt very much if we did. If we did, it would have been pure information; but I doubt very much if we did. It wasn't necessary for us to do it.

Q. Let us assume for the purpose of discussion the license had been denied prior to December 8, 1941, in connection with some remittance from Yokohama. Would you notify them if it had actually been denied, the license had been actually denied? A. No.

417 Q. What would you have done in a case of that nature? A. Just give me the date on which you ask me.

Q. In other words, let us assume that Standard made application for a license in connection with some transaction from Yokohama — Standard-Yokohama; and that the application that Standard-New York made for a license was actually denied by the Treasury Department prior to the war. What notification would you give Standard-Yokohama? A. Now, what application would we have made? What application was necessary prior to the freeze? We wouldn't have had occasion.

418 Q. I am referring to during the freeze, where an application was made and denied. What notice would you give Standard-Yokohama? A. If we had been able to communicate with Standard——

Q. It was before the war. A. Well, if we would have been able to communicate with Japan——

Q. Yes? A. When a license had been denied, we would have probably told them in the normal course, just as information, we are still working on it, but we haven't got a license.

Q. Did you notify them the license had been
419 denied? A. Did we?

Q. Would you ordinarily?

Mr. Connelly: I am going to object to this as speculative and hypothetical, unless there is some testimony that such a transaction took place.

The Court: If there was a procedure, you may give it.

The Witness: There was no procedure set up for it. It didn't happen.

420 Q. I will rephrase the question. Did you advise Standard-Yokohama of your efforts to obtain a license during the freeze for this $557,000.00 transaction? A. I couldn't answer that question from records. I think you asked me the question before and I told you, as I said, that there wasn't any necessity of their knowing. As I told you, it was only because of information we might have wanted to pass to management; not of necessity.

Q. If you did, will you produce any correspondence you had with Standard-Yokohama in connection with your applications for a license? A. If we did, we will produce them.

Mr. Bayles: Have you any, Mr. Connelly?

Mr. Connelly: We have no such correspondence.

The Witness: I don't think so.

Q. Now, you say after December 8, 1941, a reconciliation was made of your records with the records of Standard—between the records of Standard-New York and the records of Standard-Yokohama. A. I think you would have to be 422
patient with me, sir, and let me tell you again. I will repeat: A reconciliation was hardly a correct statement. If you looked at the balance sheet you have presented, or somebody has presented here in evidence, you will see in the upper part of it an account there called "New York Office."

Q. I don't mean to interrupt particularly right now, but I want to come down to the particular question. Subsequent to the declaration of war, did Standard-New York attempt some reconciliation of this $557,000 deduction?

Mr. Connelly: I will have to object to the 423
question again as assuming facts not in evidence. Perhaps if counsel would listen to the explanation—the witness has testified repeatedly there wasn't any question of a discrepancy between the Yokohama books and New York, nor a reconciliation between them; but that the sheet which counsel holds in his hand, Plaintiff's Exhibit 3, prepared in Yokohama, is part of the records of the New York office.

The Court: Maybe we can avoid all this by finding out what entries were made, if any.

Mr. Bayles: That is what I am trying to find out.

Q. What entries were made in the records of Standard, New York after the war, in connection with this transaction—this $557,561.25 remittance? A. I think I told you an entry was made setting up that item, giving credit to the management account and charging the remittance account in the regular way.

Q. After the war? A. After the war, under this
425 special license. I would have to look at the license to get the specific details as to what asked. I don't remember the license from memory.

Q. I will get that.

Mr. Connelly: I produce copies of the licenses referred to by the witness, and the vouchers reflecting the entries which he has mentioned. (Producing papers.)

Q. Perhaps you can help me out, Mr. Singer. A. O. K.

Q. I wonder if you could in chronological order,
426 advise the Court as to what entries were made? A. Could I see the voucher?

Q. Of course; and the purpose for which each one of the entries was made. This is the first entry in 1941 (indicating paper). A. These are not the original vouchers. These are all the resulting vouchers. These are not the originals.

Mr. Connelly: Here is the first license (producing paper).

The Witness: (Continuing) I think this voucher clearly is a voucher which clearly states what happened on that sheet you

gave me. This voucher reads to charge Yokohama remittance account. You were speaking about a reconciliation of accounts. You see, when it came time to close down these books, the office here considered, from the Yokohama standpoint, the transaction was finished. They had made the remittance, and they charged us, and they performed all that they were required to perform. Their books were in balance. I mean, they paid out the money, regardless of by what means, but they paid out their money and provided for a remittance. As far as they were concerned, they were finished. 428

Because of the licensing arrangement here, we could not make at that particular time—the time we received these sheets—the entry that would have cleared the account. However, having decided that Yokohama had completed its end of the transaction, it was up to us at this end to complete the transaction.

We then applied for a license to make the entry that would then bring all the accounts—our own and Yokohama—in line, which we had temporarily suspended, pending determination of what we should do. And I think this entry brings that out. It says, "To charge Yokohoma remittance account with $557,561.25 remitted in August, but left out of the voucher closing cash disbursement sheets pending license to pass same." 429

Now, that is the reason written down, left out, because they were waiting for the

430 license. This was the entry that restores it and brings that sheet into balance with the accounts; that is how this reconciles what on our Yokohama books was called the New York office account, and what on the New York books was called the management account of Yokohama. The two of them offset it.

Q. What other entries were made charging off, as a bad debt, this particular $557,561.25? A. On
431 December 31, 1941, our Counsel, because of the effect of the war, thought that it would protect ourselves—nobody knew what legislation there was going to be in connection with war losses—and in order to protect ourselves against any chance that somebody could question our right to write off, and because of the language of the Income Tax Act—he strongly recommended that all the items that we could determine were accounts receivable of any nature connected with Yokohama or the Japanese business be written off as bad debts in that year. That is the reason that
432 this entry was made, as a bad debt entry, in order to protect ourselves in the event of loss—of any type of a loss. You will notice it was written to "Profit and loss," "Account of bad debts."

Mr. Bayles: If your Honor please, I offer in evidence journal voucher dated December 31, 1941, and office journal number M 1544—bearing the same date.

Mr. Connelly: May I ask a preliminary question on the voir dire, if the Court please?

By Mr. Connelly:

Q. Do the entries with respect to which you have been testifying, Mr. Singer, all relate to the attempted writeoff of this and other Japanese transactions as bad debts, in the year 1941? A. This particular transaction, yes.

Q. Were those entries subsequently reversed? A. Yes, sir.

Q. What was the occasion for the reversal? A. On tax examination, the auditor coming in on tax examination and going through the war losses for 434
the years 1941 and 1942, this was among several other items questioned—the desirability of writing it off and taking a tax loss for it on the basis that there was a possibility of—I don't know whether he used the word "possibility" or "probability"—but the tax auditor says, "Here, you have got a claim here that has a possibility, or probability, of collection, and I want to disallow it as a war allowance and set it up as a claim." That is when the subsequent entries took place.

Q. Did you obtain a treasury license for the reversals of those items? A. I would have to look, 435
but I would assume we did.

Mr. Bayles: Pardon me. I am bringing this all out in the regular order.

The Witness: There was a license restoring it in view of the decisions.

Mr. Connelly: Now, if the Court please, in view of the testimony that this entry relates solely to deductions for tax purposes, which was subsequently reversed, I shall have to object to it on the ground of materiality.

436 *Eugene T. Singer, Plaintiff—Cross.*

The Court: I will overrule the objection, but you may introduce in evidence the subsequent entries. The weight to be given to them is another question, but I think they are admissable.

(Journal voucher received in evidence as Defendant's Exhibit B; office journal voucher received in evidence as Defendant's Exhibit C.)

437 Mr. Bayles: May I have the application for the license for the bad debt?

(A paper is produced.)

Mr. Bayles: I also offer in evidence application of Standard Vacuum Oil Company, sworn to June 26, 1942, in connection with certain entries on its books; and the license dated July 10, 1942, issued by the Treasury Department in connection with the application referred to.

Mr. Connelly: Same objection.

The Court: Same ruling.

438 (Received in evidence as Defendant's Exhibit D.)

By Mr. Bayles: (Continuing)

Q. If I understand these exhibits correctly, Mr. Singer, on December 31, 1941, Standard-New York wrote off $557,561.25 representing this telegraphic remittance as a bad uncollectible debt; is that correct? A. I wouldn't say "uncollectible". We just wrote it off as a bad debt.

Q. I refer you to your own voucher which has been marked in evidence as Defendant's Exhibit B, and the use of the word "uncollectible" ap-

pears thereon. Is that so? A. For tax purposes they carefully used the language. That doesn't say those are the facts.

Q. Do you mean for tax purposes you would claim that to be uncollectible, although it was not the fact? A. It would have been if it later developed that way. You have got a three year period of audit.

Q. But at that particular time you claimed it was uncollectible? A. Sir, that is the procedure of the company under certain conditions—to write off bad debts. 440

Q. What conditions are they? A. In the ordinary way, we write off bad debts after 15 months, and frequently go and get collections at a subsequent period—in which case, when the collection takes place, it is taxable income. This was written off at the advice of counsel, merely to protect a position nobody knew anything about.

Q. In other words, as far as Standard-New York was concerned, they were willing to wipe off recovery of $557,561.25 in December 1941? A. On the books——

441

Mr. Connelly: I object to that, if the Court please, as immaterial.

The Court: Sustained.

Mr. Bayles: I will try to rephrase it.

Q. Upon what facts did Standard act in writing off this bad, uncollectible debt? A. On the same facts that we had to write off all our assets in these various areas—as a protective measure.

Q. Did you receive a written memorandum at the time setting forth the basis for writing off this debt as uncollectible and bad? A. No, no written statement, but it was just a general statement by

442 *Eugene T. Singer, Plaintiff—Cross.*

the advice of counsel about all so-called accounts receivable.

Q. That pertained to accounts receivable against foreign banks—from foreign banks to Standard? A. Any enemy bank; if we were in any type of enemy bank, or any type of accounts from enemy territory, or enemy-occupied territory.

Q. Yes. But I am trying to find out a little bit more about the actual, factual basis that Standard had at the time it decided to write off this debt at the end of December 1941. A. I can't give you a
443 citation, sitting here, as to the sections of the Income Tax Act. Our attorneys felt that the bad debt write-off should be within a prescribed year. There was a change in the Act, if you recall, in 1941 or 1942. I think that had a very definite bearing on a bad debt write-off, and it was no doubt not to be caught under that section of it, that counsel suggested that we take that action. It subsequently, of course, as you know, was not necessary, because you could write it off as a war loss.

Q. But this particular license that denied Stand-
444 ard's application only came down in January 1942. A. That is right.

Q. Pardon me, not particular license, but this particular denial of Standard's application,— A. That is right.

Q. —came down in January 1942? A. That is right.

Q. Yet you wrote this loss off as of December 1941. Is there any explanation for that? A. Because we didn't know what the position would be. I am trying to say to you, counselor, it was like a protective measure, by advice of our attorneys from a tax angle. You see, what we did could

have been one thing. What would be sustained under an examination is an entirely different matter. As you know, they could be reversed; and they were.

Q. Don't you attempt to make entries in compliance with the regulations of the Treasury Department? A. And that is what this one was attempting to be. That is what this was an attempt to be—to come within the regulation. If there were a loss we were within the regulation. If there was no loss, it could be restored.

446 Q. They determined at that time that in December 1941 collection was pretty improbable? A. No. That was not so.

Q. Well, I am trying to find out what is the basis of calling this uncollectible in December 1941. A. Sir, all of our bad debts in all these areas are not necessarily uncollectible; but the question of taking advantage under the laws, particularly with the war situation—let me put it this way: If it had not been for war, if it had not been for the situation that was surrounding this particular transaction, and others of a similar nature, these items would not have been written off. 447 It was the condition of the war—the war condition, in which we wanted to take advantage of war losses, that these actions were taken. They were purely, as I tried to say several times, protective. I may go further on that and explain that to clarify it further.

Q. Anything you want to say is all right. A. When the examiner came in and examined——

Q. No. We are coming to that in a little while. A. That shows what the action was, though.

Q. Isn't it true you have got to make an attempt to collect a debt before you could write it off as uncollectible? A. Sir?

448 *Eugene T. Singer, Plaintiff—Cross.*

Q. Isn't it true you have got to make an attempt to collect a debt before you can write it off as uncollectible?

Mr. Connelly: If the Court please, I object to this line of questions as wholly immaterial to any issue involved in this case.

Mr. Bayles: I think it is very important, Mr. Connelly, to show that Standard in December 1941 wrote off this claim as un-
449 collectible and a bad debt.

Mr. Connelly: Whether this claim is collectible or not will depend on the judgment of the Supreme Court of the State of New York, and will not be affected in any way by the company's own consideration of the question, so far as Income Tax Laws are concerned.

Mr. Bayles: But it will, I believe, show an inclination as to what the company considered this debt.

The Court: I think the condition of the
450 books at various times is some evidence—I won't say it is conclusive—but I think it is admissible.

Mr. Connelly: I wasn't addressing my objection to the question of what the books entries showed. They are already in evidence. Counsel is now interrogating the witness as to what the provisions of the Income Tax Law required, and I submit that is going far afield from any issue in this case.

The Court: Well, so far as he knows in his practice in connection with accounting matters. We are speaking of accounting

matters. It is from an accounting standpoint, not what the law actually is, but as to what the practice is. As I remember the statute at that time, before you could take it as a deduction, you had to ascertain it to be worthless and charge it off in the taxable year.

The Witness: That was the point.

Mr. Connelly: The point of my objection is, whether that be so or is not so, hardly has any bearing on the issues in this case.

The Court: It may. I don't know whether 452
it has necessarily.

Mr. Bayles: If I can presume on your Honor's question——

Q. What actual attempts did Standard in New York make to collect this particular $557,000 claim? A. Made several attempts to see the State Superintendent, tried to get a license from the Treasury to permit the State Superintendent to pay. I think there were several interviews with him. Of course, during the period, as you know—from pretty near August, the latter part of Au- 453
gust, up to the outbreak of the war, we were attempting——

Q. But the question I am directing to you right now is this: Sometime during the year 1941 a determination was made that this debt was uncollectible, is that correct or not? A. Oh, no, no, sir. No, sir, that was not the determination.

Q. Although this particular voucher is dated December 31, 1941, which has been marked in evidence as Defendant's Exhibit B, was it made on that date? A. To the best of my knowledge it was, but I couldn't swear as to the exact date.

454 *Eugene T. Singer, Plaintiff—Cross.*

I told you I remember the incident in which most of these, and I think this was one of them, was done, but I couldn't tell you the exact date the ink was written. But I assume it was.

Q. I just want to refer you to a rather obvious thing—that this particular voucher refers to a denial of the United States Treasury. A. Well, then, it may have been made at a later date. I couldn't tell you from that.

Q. Isn't it true that the United States Treasury only denied that in January 1942? A. That was
455 the date. But I told you from that, this is the effective date of the entry. The date it was actually written, I couldn't tell you.

Q. So this date, December 31, 1941, appearing upon this ledger sheet or voucher sheet, is not the exact date it was written? A. I couldn't tell you from that voucher what date it was actually written.

Q. Now, was Defendant's Exhibit B, the voucher, made in the regular course of business by Standard Vacuum? A. That is right.

Q. And it is customary for Standard Vacuum
456 to make entries dated back? A. It is quite customary in all accounting practices to make journal vouchers dating back to the effective date, regardless of the date the entry was made. That is what the journal is for.

Q. Were the entries writing off this bad debt, bad, uncollectible debt, made in 1941? A. They were made effective for 1941. I just told you I couldn't tell you what date they were made.

Q. Is there any particular reason that Defendant's Exhibit D, representing your application to make the entries in connection with that bad debt, was only prepared on June 26, 1942? A. Other than the fact—which particular entry was that?

Q. This one right here (indicating)? A. Can I see the application?

Q. Yes (handing paper to the witness). A. Yes, yes. By that time you had your legislation as to the war losses here, and you recall the Treasury designated the years in which war losses could be taken in the various areas; and one of the provisions was that the year in which that loss arose —that is, the territory was invaded—the taxpayer had the option of either the invasion or the year of loss controlling, whichever he desired, but in no other areas, and in that way designated the 458 years in which war losses must be taken.

Japan happened to be 1941, so I think the reason why—although I don't make this as a positive statement—but I think the reason why it was at the time we found that in order to get any benefits—if benefits were necessary, following legislation—that we took and made this application was in order to get it in in the year of loss, if it was to be a loss. It was obvious, if it was to be a loss, the loss had to be in 1941—if there was to be a loss.

Q. So you were trying to establish this as a 459 loss in 1941? A. We were trying to establish it, in case there was eventually a loss.

Q. Mr. Singer, isn't it true that on December 29, 1941, you, on behalf of the Standard Vacuum Oil Company, filed an application, or, you call it a supplemental application, to the Treasury Department for a license? A. You hold it in your hand and I presume—I don't know the exact words—but we filed a supplementary application.

Q. (Handing paper to witness.) A. That is right.

460 *Eugene T. Singer, Plaintiff—Cross.*

Q. Can you tell me, please, Mr. Singer, whether Standard reports on a taxable year basis, December 31, 1941, or fiscal year basis? A. Fiscal and calendar happens to be the same.

Q. December 31, 1941? A. I would like to get it so you don't misunderstand that. You know, we have got a peculiar situation in the branch, where a branch is part fiscal and part calendar. As far as transactions in the field are concerned, transactions end on November 30th. But as far as transactions in other areas, in New York affecting the
461 branch is concerned, they are carried to December 31st.

Mr. Bayles: At this time, your Honor, I offer in evidence applications for license verified by Standard Vacuum Oil Company, Eugene T. Singer, Treasurer, on December 29, 1941, containing reference "N. Y. 334372" an application for license filed by Standard Vacuum Oil Company, verified August 29, 1941, bearing reference "N. Y. 235383". I am offering these applications, your Honor, not to prove the statements
462 contained on them, but simply the fact that Standard Vacuum Oil Company filed an application in this particular transaction.

Mr. Connelly: Well, I will concede, of course, the fact that the applications for Treasury license, authorizing payment of the $557,000 odd were made—an application was filed under date of August 29, 1941, and a supplementary application filed under date of December 29, 1941. Does that cover your purposes?

Mr. Bayles: No. I should like to find out what the particular application sought.

Mr. Connelly: Well, I am a little handicapped. I don't know quite what counsel's limitation is. He says it is being offered in evidence, but not for the purpose of proving anything in the application, but merely the fact of the application.

Mr. Bayles: The application by Standard to permit certain entries to be made, and to permit certain payments to be made. I am offering them for that purpose; but as to the statements of Standard Vacuum Oil as to the underlying transaction—I am 464 not offering it for that purpose.

Mr. Connelly: I have no objection to the documents going in evidence, if that is what the effect is to be, but I just do not understand the limitation that counsel seeks to impose upon his offer.

Before it is marked, may we have some clarification?

The Court: I am taking it somewhat like the limitation on your own claim, the claim you made to the Superintendent of Banks. The limitation is not necessarily being 465 stated in that claim as true. Otherwise there wouldn't be any use of trying the case. With the same limitation, this is admitted.

Mr. Connelly: That is true. If that is all it is offered for, merely to prove that an application was made, that is perfectly all right too.

(Two applications received in evidence as Defendant's Exhibits E and F, respectively.)

466 *Eugene T. Singer, Plaintiff—Cross.*

Mr. Bayles: I should like to offer in evidence, if your Honor please, the original letter from the Federal Reserve Bank, dated October 15, 1941, referring to application N. Y. 235383; and letters dated January 13, 1942, and January 14, 1942, respectively, from the Federal Reserve Bank of New York, Foreign Property Control, denying the two applications, which have just been marked in evidence.

Mr. Connelly: No objection.

467

(Three letters referred to received in evidence as Defendant's Exhibits G, H and I, respectively.)

Mr. Bayles: Will counsel also concede that Eugene T. Singer, plaintiff herein, by notice dated April 12, 1944, verified on the same date, filed on April 15, 1944, with the Office of the Alien Property Custodian, notice of claim arising as the result of vesting order in the sum of $557,561.25, based upon the same claim made against the Superintendent of Banks.

468

Mr. Connelly: I think that statement might be a little too abbreviated as a characterization of the claim, and the effect of filing it with the Alien Property Custodian. If counsel deems it of any importance, I have no objection to offering the claim itself in evidence.

Mr. Bayles: We will then do that. I offer this notice of claim in evidence—of course, without in any way offering it for the purpose of proving the facts contained therein.

Mr. Connelly: No objection.

(Received in evidence as Defendant's Exhibit J.)

By Mr. Bayles: (Continuing)

Q. Mr. Singer, Standard in Yokohama had other bank accounts there besides the account with the Yokohama Specie Bank, is that correct? A. Oh, yes.

Q. It also had accounts with the National City Bank? A. I think so, but I can verify it from the records. But I think so.

Q. And with the Hong Kong and Shanghai Banking Corporation? A. That I am not sure, but if you let me see the records, I could tell you. 470

Q. Now, isn't it a fact that a number of telegraphic remittances from Yokohama were made by Standard-Yokohama to Standard-New York, not through the Yokohama Specie Bank? A. I don't know what you mean by the word "number." There have been remittances made through other banks; but in recent periods, during the freezing periods, of course, most of it was through the Yokohama.

Q. Well, was there any remittance made on July 1, 1941, to Standard-New York, not through Yokohama Specie Bank? A. Could you let me see the remittance sheet for a moment from July 1941, and I could answer you. But I certainly couldn't answer you from memory. 471

Mr. Bayles: Do you have that, Mr. Simpson?

Mr. Connelly: Without conceding the materiality of the question, I will concede that there was.

Q. In other words, remittances from Standard-Yokohama to Standard-New York did not always go through Yokohama Specie Bank, Ltd., is that correct? A. Oh, yes, certaintly. That is correct.

Q. Now, isn't it true that these various remittances that you received from Standard-Yokohama through Yokohama Specie Bank, Ltd. in Yokohama, were all made on the same date that a cable was received by the New York Agency? A. I think the practice, until special circumstances, was generally they would send the cable the day they made the remittance.

Q. It was treated as a more or less cash transaction, is that correct? In other words, the direction to pay and the payment— A. More or less.

473 Q. —were immediate? A. Barring cable delays and differences in time.

Q. That is right. Upon receipt of the cable, it was contemplated there would be immediate cash payment? A. As reasonable as possible, after the bank had gotten their advice.

Q. Immediately. A. It depends what you mean by the word "immediately." Reasonable.

Q. Reasonably, within a few hours after the cable? A. Or within banking hours if possible.

Q. Was Mr. Midtbo in 1941 under your supervision—Harold Midtbo? A. Yes, sir.

474 Q. That is M-i-d-t-b-o. Was also Mr. Kenney in 1941 under your supervision? A. Yes, sir.

Q. Do you recall ever having been personally at the office of the New York Agency of Yokohama Specie Bank at 120 Broadway? A. Personally being there?

Q. That is right. A. Not that I recall.

Q. Do you ever personally recall speaking to anyone at the Agency prior to December 8, 1941? A. Actually at the Agency, or outside?

Q. Outside; anywhere. A. Well, that I can't remember particularly. I met a lot of Japanese, and I met a lot of Japanese bankers, and I am quite

475

certain at some stage I dealt with Japanese bankers from the Yokohama Specie Bank.

Q. One of the agents or sub-agents? A. Well, somebody of that nature. But I couldn't tell you who it was.

Q. Do you remember the name Mr. Nishi? A. I know the name, but I can't particularly recall the individual. I may have met him.

Q. Did you know he was the Japanese agent in charge of this particular agency in 1941? A. If you were to ask me from knowledge I have right now, or memory right now, I couldn't answer to you. But I could look up records, certainly, to determine whether I knew it at the time or not.

476

Q. I wish you would do that, Mr. Singer.

Mr. Connelly: Well, I am going to object to that, if the Court please, immaterial and not proper cross examination. I don't see why this witness should be asked to go back into prior records to find out whether he knew a particular Japanese at a particular time.

477

Mr. Bayles: The purpose of this line of questioning, your Honor, is to show knowledge of Standard Vacuum of the physical setup and personnel setup; of the New York Agency of Yokohama Specie Bank, Ltd.

Mr. Connelly: This witness was asked no questions on that subject on direct examination.

Mr. Bayles: It becomes increasingly important, your Honor, when the plaintiff here claims originally that one Gustave Hapke was the cashier at the New York Agency, and also claims apparently author-

ity of two individuals connected with the New York Agency to enter into some oral conversations, agreements or commitments, or whatever have you—which would have the effect of binding this New York Agency with an obligation of some $557,000. The purpose of these questions, as I can show, is what prior knowledge Mr. Singer had, or contacts, with representatives of the New York Agency.

479 The Court: By whom were these letters signed that have been admitted?

Mr. Bayles: There is only one letter signed here, your Honor, that I believe you saw—the August 29th letter.

The Witness: Yes.

Mr. Bayles: That was signed by a Japanese per proc. agent named Araki.

The Court: I will overrule the objection. We will take a recess until 10:00 o'clock tomorrow morning.

480 (A recess was taken until 10 A.M., September 25, 1946.)

New York, N. Y., September 25, 1946.

(TRIAL CONTINUED, PURSUANT TO ADJOURNMENT.)

Mr. Bayles: If your Honor please, in order that the record may be clarified, I should like Mr. Connelly to concede that by order of Mr. Justice Aaron J. Levy, the particular action here against Yokohama Specie Bank, Ltd., the foreign corporation,

was severed and stayed, and the plaintiff was stayed from proceeding against that foreign corporation.

Mr. Connelly: Yes, subject to any correction in the exact terminology, if I find any, I think that is a correct statement.

Mr. Bayles: I also should like to move at this time to amend the answer to include a fourth separate defense which I note the plaintiff has included in the marked pleadings. The defense simply refers to the fact that applications for licenses were 482 made, and they were denied by the Treasury Department.

Mr. Connelly: We have no objection to the amendment. Of course, we do not concede the sufficiency of it.

The Court: The answer is so amended.

Mr. Bayles: Thank you.

EUGENE T. SINGER, resumed the stand:

Cross examination by Mr. Bayles (continuing): 483

Q. Mr. Singer, were you in any way able to refresh your recollection as to the name of that Japanese Agent with whom you dealt? A. No.

Mr. Connelly: I beg your pardon, I will have to object to the form of the question. There was no testimony by the witness that he dealt with any Japanese Agent.

Mr. Bayles: Or the Japanese representative.

Mr. Connelly: Well, I am still going to object to the question.

484

The Court: Give the name of the man to whom you are referring. You gave it yesterday.

Q. Will you kindly let the Court know the name of that Japanese gentleman, whoever he might have been, whom you referred to yesterday in your examination. A. That I referred to?

Q. To bring your recollection back, Mr. Singer, you testified that you had some talks with some Japanese person who was connected in some way

485 with some financial institution, and you were going to see if you could refresh your recollection as to the name of that particular individual. A. Oh, no. I had no way of knowing who those people were. I said I would try to find out.

Q. That is right. A. If I could find anything that would refresh my memory. I asked my secretary, and she found nothing in any records which would refresh my memory as to any of the people I had had luncheon with.

Q. I would like to resume, Mr. Singer, if you don't mind, questioning about that $557,000 re-

486 mittance. I believe you testified—and correct me if I am wrong—that upon receipt—that from August 29, 1941 until sometime in December 1941, no entry at all was made upon any book or record of the New York office of Standard, is that correct? A. I don't——

Q. Pardon me—in connection with this $557,000 remittance. A. There were vouchers that you showed me yesterday, there was an entry made effective as of a certain date. Now, which date that was—I think it was December 31st.

Q. I said up to December; from August 29th up to December, no entry was made? A. As far as I know.

487

Q. Is that correct? A. As far as I know.

Q. Well, you were treasurer of the organization. A. Well, unless I reviewed every book the company has, I couldn't tell you whether an entry was made or not.

Q

Q. Now, the company has been subpoenaed to produce its books and records. Have you produced all the books and records? A. All the books and records. If you let me review those vouchers again, I will tell you approximately the time the vouchers were made.

Q. Certainly.

488.

Mr. Connelly: I think counsel's question calls for the date prior to the time of the making of those vouchers. Is that correct, Mr. Bayles?

Mr. Bayles: Yes, Mr. Connelly.

Mr. Connelly: And I may state for the record that an examination of the books of Standard Vacuum discloses no entries between the journal entry contained on Plaintiff's Exhibit 3, and the vouchers to which you have referred, with reference to the remittance of $557,000.

489

Mr. Bayles: Thank you for the concession, but that is not a complete answer to the question. I am asking Mr. Singer whether any entry was made in any book of Standard-New York from August 29, 1941, up to the date of this particular voucher.

Mr. Connelly: You are excluding the journal entry, Plaintiff's Exhibit 3? You mean other than the journal entry?

Mr. Bayles: Other than the receipt of this particular journal.

Mr. Connelly: Well, the answer still stands—there isn't any such entry.

Mr. Bayles: Very well. Thank you.

Q. I also understand, Mr. Singer, that upon receipt of Plaintiff's Exhibit—oh, before that—you testified, as I recall, something about some memoranda being prepared after August 29th, on or after August 29, 1941, in connection with this remittance. A. Memoranda?

Q. That is right. Well, I will ask the question:
491 Were any memoranda prepared by Standard on August 29, 1941, or thereafter, in connection with this remittance, until this particular voucher, Defendant's Exhibit C? A. I don't quite understand what you mean by "memoranda". For example, there was data, whichever pieces of paper they used to prepare the license. But I don't understand beyond that what you mean by "memoranda."

Q. Have you the data upon which Standard acted in making an application for licenses? A. The data would be history, as reported in the
492 exchange settlement forms, the reports of the exchange settlements that you put in as evidence.

Q. I see. And that data did not include any memoranda which was made on or after August 29, 1941? A. Not to my knowledge, other than that data that was on the exchange reports.

Q. All right. Were you able to locate, since you testified yesterday, any correspondence from Standard New York to Standard Yokohama, in connection with Plaintiff's Exhibit 3? A. I am quite certain there was no correspondence whatsoever on the subject with Yokohama.

493

Q. Now, we come to Defendant's Exhibit C and Defendant's Exhibit B. I believe you testified yesterday that although they are dated December 31, 1941, you agree that they were not actually made until sometime after—sometime in 1942. Is that correct? A. That is correct.

Q. Do you know whether those memoranda were before or after Standard received this particular license annexed to Defendant's Exhibit D (indicating), which was made, as I recall, in June 1942. A. You are asking me about the denial?

494

Q. No. I am asking whether that voucher was made before or after June 1942. A. I cannot tell you the exact date that this voucher was passed. I can tell you the date that it was prepared, but I can't tell you the date it was passed.

Q. Oh. What date was that voucher prepared? A. The 10th of June.

Q. 10th of June 1942? A. That is right.

Q. But dated back as of December 31, 1941? A. Effective December 1941 transaction.

Q. What indication upon Defendant's Exhibit C makes you state that it was prepared in June 1942? A. This date that appears right here (indicating).

495

Q. Referring to the date on the bottom of Defendant's Exhibit C, is that correct? A. That is right.

Q. Now, as of December 1941, the Standard Vacuum set up on its books, certain entries for the first time in connection with this telegraphic remittance of August 29, 1941, isn't that correct? A. I think that's correct. Yes, sir.

Q. Do you have the books of Standard which reflect each entry that was set up in December 1941 in connection with this remittance? A. We have the books.

496 Q. May I have them, please? A. I haven't got them here. They are down the office. They are great big ledgers.

Q. Well, it is rather—weren't they cards, so that you can bring the tickler entries? A. Part of them are cards, and part of them are the general ledger. Part of them are on regular ledger sheets.

Q. The particular accounts, aren't they cards so that you can bring them down to court here, so that we can see them? A. I think the cards could
497 be brought here.

Q. Fine. Will you do that?

Mr. Connelly: If the Court please, I am going to renew my objection. I have previously interposed an objection to this line of questioning, which your Honor has overruled. We are getting so far afield from the issues in this case, that I submit it is an imposition on the Court and counsel to ask at this time that certain additional records be produced. As I understand it—may I ask the witness this one question? So far
498 as the entries made as of December 31, 1941, in whatever books they may ultimately appear, you have with you the vouchers covering those entries?

The Witness: Yes, sir.

Mr. Connelly: And what counsel is now asking for is merely the final volume into which these particular voucher entries were transcribed. I submit there is no occasion to interrupt the trial to produce that additional document, or those additional records.

The Court: I think if they are original records, and they certainly are, they should be produced—the original entries. These others are merely vouchers preceding the entries.

Mr. Connelly: Well, if I have understood the witness's testimony correctly, these vouchers are themselves the original entries.

The Court: They can't be the books of account, counsel; that is obviously improper. The original entries are in the original books of account, which are general ledgers or journal. Were they subpoenaed? 500

Mr. Bayles: Yes, your Honor.

The Court: They should have been produced.

Mr. Connelly: We will undertake to have here, if the Court desires it, whatever records are available in connection with those entries.

Mr. Bayles: Well, for the time being we will omit that. I prefer then, your Honor —I am not a bookkeeper, I think I would prefer to recall this witness and question him, the treasurer, when the books are produced, in connection with these particular entries which were made. 501

The Court: All right.

Mr. Bayles: Will your Honor also permit me to examine these books and records in advance of the further cross examination of the witness?

The Court: Yes.

502 *Eugene T. Singer, Plaintiff—Re-direct.*

Mr. Bayles: With that, I have no further questions to ask this witness at this particular time.

Redirect Examination by Mr. Connelly:

Q. Just a few questions, Mr. Singer: You were asked on cross examination with reference to Plaintiff's Exhibit 3, being the journal entries for the month of August 1941 affecting the New York office. Is it a fact, Mr. Singer, that that particular
503 piece of paper, Exhibit 3, is a part of the books of the New York office as the journal entries covering those transactions? A. Yes, sir.

Q. Now, you were asked on cross examination, Mr. Singer, with reference to various entries which were made subsequent to the receipt of that report, in other books and records. Are we correct in understanding that those other books and records are all ledger accounts? A. Ledger accounts and the journals leading up to the ledger accounts.

Q. And those accounts reflect the internal relationship between the Japanese office and the New York office, and the profit and loss of the New
504 York office; is that correct? A. That is correct.

Q. Was there at any time any entry made in any books of account purporting to modify, change or alter the journal entry, the first one on Plaintiff's Exhibit 3, so far as the transaction which that journal entry reflects?

Mr. Bayles: Pardon me, your Honor. I object. This particular journal entry, Plaintiff's Exhibit 3, on its very face shows a deduction from the total of this very first entry. So that I submit, your Honor, I don't believe it was included upon any book

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or record of Standard Vacuum, so obviously there could be no modification of an entry which was not already made. Counsel's question assumes the entry was made.

The Court: Was an entry made?

The Witness: At a subsequent date the entry was made.

The Court: I overrule the objection.

Mr. Bayles: Exception, please.

Q. Now, do you have my question? A. No.

506

(Last question repeated by the stenographer.)

A. No, sir.

Q. Now, in connection again with the questions asked you about entries made in other books or records, upon receipt of the journal entries in Plaintiff's Exhibit 3, what was the practice during the period from July 1941 to and including December 1941, with reference to Standard of New York making entries in its books here in New York affecting the Yokohama office?

507

Mr. Bayles: The office of Standard?

Q. Of Standard. A. You ask the question, what was the practice?

Q. Let me state it this way: Was it the practice of Standard Vacuum in New York, during that period from July 1941 to December of 1941, to obtain a Treasury license authorizing the making of entries in your books, before making any further entry in your books affecting the Yokohama office? A. Yes, sir.

Q. And is it a fact, Mr. Singer, that for each of the other entries listed on the journal sheet,

Plaintiff's Exhibit 3, each entry other than that first cable remittance, a Treasury license was obtained, authorizing the making of that entry in the New York books of Standard Vacuum? A. Yes, sir.

Q. You were also asked on cross examination, Mr. Singer, as to whether you had received advice in or about July 1941 from your Yokohama office that the Japanese government had done something with reference to the outstanding forward exchange contracts. Do you recall that? A. Yes.

509 Q. And in that connection you were shown the cable marked Defendant's Exhibit A from your Yokohama office to the New York office (showing paper to witness). Now, were you subsequently, subsequent to the receipt of that cable, Defendant's Exhibit A, advised by your Yokohama office, that a permit had been——

Mr. Bayles: Pardon me. I object to the question as leading.

Mr. Connelly: Can't I finish the question?

510 Mr. Bayles: I am sorry.

Q. (Continuing)—advised by your Yokohama office of any change in the situation so far as the outstanding forward exchange contracts were concerned? A. I got that interruption. I wonder if you would rephrase that.

Q. Let me start over again: Following receipt of the cable which had been marked Defendant's Exhibit A, did you thereafter receive further advice from the Yokohama office of Standard Vacuum, concerning the then status of the forward exchange contracts? A. Yes, sir.

511

Q. I show you Plaintiff's Exhibit 1 for Identification, and ask you if that is one communication with reference to such advice? A. Yes, sir.

Q. In connection with Plaintiff's Exhibit 1 for Identification, I call your attention to the first two words, "Our 50," and ask whether that reference to "our 50" is to the cablegram which has been marked Defendant's Exhibit A? A. Yes, sir.

Mr. Connelly: I now, if the Court please, renew our offer of Plaintiff's Exhibit 1 for Identification.

512

Mr. Bayles: I make the same objection, your Honor, that I made yesterday to the introduction of this particular cablegram, on the ground it is a self-serving declaration; upon the ground it is a statement of future intent; and that if a claimant wishes to prove any government permission was obtained in this connection, I don't think he can prove it by a statement by Standard-Yokohama.

Mr. Connelly: If your Honor please——

The Court: I overrule the objection on the ground it is an answer to the cablegram which you produced in evidence.

513

Mr. Bayles: Exception, please.

(Plaintiff's Exhibit 1 for Identification now received in evidence as Plaintiff's Exhibit 1.)

Q. I also show you, Mr. Singer, Plaintiff's Exhibit 2, being a letter from Standard Vacuum, Yokohama, to Standard Vacuum, New York, dated September 8, 1941, and ask whether the second paragraph of that letter likewise refers to the

status of outstanding forward exchange contracts? A. Yes, sir.

Mr. Connelly: If the Court please, in offering Plaintiff's Exhibit 2, initially, I offered only the first paragraph of the covering letter, which merely related to the enclosures, meaning the monthly report of exchange quotations and the like. In view of counsel's cross-examination concerning this witness's advice as to the status of forward exchange contracts, and the permit outstanding by the Japanese Government, I should like to expand my offer of Exhibit 2, so as to include the first three sentences of the second paragraph.

515

Mr. Bayles: I object, your Honor, to the introduction of any other portion of Plaintiff's Exhibit 2 than already has been marked in evidence.

The Court: I overrule the objection, and an exception to you.

(Plaintiff's Exhibit 2 amplified to cover the first three sentences of the second paragraph.)

516

Mr. Connelly: That is all.

Mr. Bayles: No further questions at this time.

CLARENCE E. MEYER, residing at Stanhope Hotel 5th Avenue and 81st Street, New York City, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Connelly:

Q. Mr. Meyer, are you presently associated with the Standard Vacuum Oil Company? A. Yes, sir.

Q. In what capacity? A. Director and vice president. 518

Q. For how long and beginning at what time were you first associated with the company? A. I have been with the Standard and its predecessor for 33 years.

Q. During the period from 1935 to 1941, what was your position with the company? A. I was in Japan; and from—beginning with 1936 until Pearl Harbor, I was general manager for Japan.

Q. Your offices were where? A. Yokohama.

Q. Were you the highest ranking official of the company in the Yokohama office? A. Yes, sir.

Q. And you remained there to and including 519 the outbreak of war on December 8, 1941, is that correct? A. Yes, sir.

Q. In connection with your functions as general manager of the Yokohama office, were you in general familiar with the accounting system followed by the office? A. Yes, sir.

Q. I show you a document which has already been identified here and marked in evidence as Plaintiff's Exhibit 3—journal entries to New York office, and I call your attention to a space in the form in the upper lefthand corner, for three signatures or initials—one "Prepared by," two,

520 "verified by", and three, "Attested"—and ask you whether it was the practice of the Yokohama office of Standard Vacuum to have each such report prepared by one clerk, verified by another, and attested by an accountant? A. It was; yes, sir.

Q. Can you identify the initials appearing under the third such entry, "Attested by"? A. Yes, sir.

Q. What initials are those? A. V. A. Gulick; Vernon A. Gulick.

521 Q. And what position did Vernon Gulick? A. He was American accountant.

Q. Did you also have Japanese accountants in the office? A. Yes.

Q. I show you Plaintiff's Exhibit 2, Mr. Meyer, letter of September 8, 1941, from the Yokohama office, and ask you whether you identify the signature to that letter? A. Yes, sir.

Q. What signature is that? A. F. E. McCorkle. He was the chief accountant.

Q. Were you his immediate superior? A. Yes, sir.

522 Q. I also show you Plaintiff's Exhibit 4, a document identified as a general ledger trial balance, and call your attention to the same or corresponding spaces for verification, and as in the case of Plaintiff's Exhibit 3, and ask you whether you identify the signature of the accountant attesting to that record? A. Yes, sir.

Q. What signature is that? A. V. A. Gulick.

Q. And the same question with reference to Plaintiff's Exhibit 5? A. Yes, sir; also V. A. Gulick.

Q. In connection with your duties as general manager of the Yokohama office, Mr. Meyer, were

523

you in general familiar with the cable remittances being made from time to time by the Yokohama office to Standard Vacuum-New York? A. Yes, sir.

Q. And specifically, were you familiar with the transaction referred to in Plaintiff's Exhibit 1, in reference to a remittance in August of 1941 of $557,000 odd? A. Yes, sir.

Q. At any time between August 29, 1941, and December 8, 1941, were you notified by the Yokohama Specie Bank in Japan of any attempt to modify that transaction in any respect? A. No, sir.

524

Mr. Connelly: You may examine.

Cross examination by Mr. Bayles:

Q. Just a few questions, Mr. Meyer. What was the name of the gentleman in your office in Yokohama, Japan, who was actually in charge of telegraphic remittances? A. Mr. McCorkle.

Q. Now, when you stated before that Standard-Yokohama did not receive any communication from Yokohama Specie Bank, Yokohama, in connection with a certain foreign exchange contract, are you referring to a written communication? A. To the best of my recollection, we had no communication.

525

Q. But the other gentleman, the accountant, was in charge of remittances; he was the person under you who was actually in charge? A. Yes, sir, that is right.

Q. And if there had been any correspondence or conversations back and forth, this particular accountant would have been the one who would have handled it; is that correct? A. Yes. But he would have brought it to my notice.

526 *Examination of Eugene J. Mulligan Before Trial.*

Mr. Bayles: No further questions.

Mr. Connelly: That is all, Mr. Meyer. At this time, with the Court's permission, I should like to read into evidence portions of the examination before trial of Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the assets in New York of Yokohama Specie Bank, Ltd., by Eugene J. Mulligan—the examination held first on June 3, 1946; beginning first with the direct examination on
527 page 3, Mr. Bayles:

"Q. Mr. Mulligan, will you please state your full name? A. Eugene J. Mulligan.

"Q. Where do you live? A. 253 Bennett Avenue, West New Brighton, Staten Island.

"Q. Prior to December 8, 1941, were you employed by the New York Agency of Yokohama Specie Bank, Ltd.? A. Yes.

"Q. For how long a period of time were you employed by that Agency? A. Approximately 32 years.

528 "Q. Hereafter, when I say Agency, I will be referring to the Agency of the Yokohama Specie Bank, Ltd. After December 8, 1941, were you employed by the Superintendent of Banks of the State of New York in connection with the liquidation of the New York Agency? A. Yes.

"Q. Have you been so employed since December 8, 1941? A. No, not since December 8th. I think that was December 28th.

"Q. But on December 28th you came within the employment of the Superintendent of Banks? A. That's right.

"Q. In connection with the liquidation of the Agency? A. That's right.

"Q. In the course of your employment with the Agency prior to December 8th, did you become familiar with the books and the records of the Agency? A. Yes.

"Q. And did you become familiar with the steps taken when the Agency received telegraphic instructions from the home office in Japan, to make payments of money in New York."

Mr. Connelly: Then skipping the coloquy.

"A. I was not in the cashier's department, but I know in general the procedure of the cashier's department." 530

Mr. Connelly: I will skip over to page 5, about three questions from the bottom:

"Q. Was there a Japanese agent by the name of Araki in the office? A. Yes.

"Q. How do you spell his name? A. A-r-a-k-i.

"Q. Do you know his first name? A. No, I don't remember it offhand.

"Q. Did the Agency have an employee in that office named Hapke? A. That's correct. 531

"Q. How do you spell his name? A. H-a-p-k-e.

"Q. Do you remember the first name? A. Gustav.

"Q. Do you know how long he was employed by the Agency? A. No.

"Q. Well, was he employed before you? A. Oh, no. I don't know definitely the length of his employment, but I would say it was about 20 years, maybe a little more.

"Q. What was his position with the Agency? A. Clerk.

"Q. What were his duties if you recall? A. His duties were in the cashier's department."

532 *Examination of Eugene J. Mulligan Before Trial.*

Mr. Connelly: Then, skipping over to page 7, about the middle:

"Q. Mr. Hapke you said was a clerk. Do you know what his customary duties were? A. He was the senior American clerk in the cashier's department. As far as the detail of the work is concerned, that I am not acquainted with.

"Q. Then if he was senior American clerk, his immediate superiors would have been the Agent and the per proc. Agent? A. The per proc. Agent
533 in charge of the cashier's department.

"Q. And what per proc. agent was in charge of the cashier's department? A. Araki.

"Q. Now I understand that sometime prior to December 8, you became chief American clerk of the Agency, is that correct? A. I was not called chief American clerk. I was actually known as senior American clerk.

"Q. And how long were you known as senior American clerk? A. For about eleven years.

"Q. Will you outline for us your duties as senior American clerk during the period between
534 August 1, 1941, and December 8, 1941? A. My duties at that time were principally in a supervisory capacity on the applications for licenses granted to effect payments, and so forth, under the freezing regulations.

"Q. In other words, when the Agency received instructions to make payments of funds in New York out of the Agency's account at one or more of the banks where it had an account, you had some duty in connection with arranging for those payments, is that what you mean? A. In this respect: That if the New York Agency was going to apply for a license to effect payment, then

I would have the supervisory power on that application that would be made by the respective department, in order to see that the situation was fully covered when the license was granted."

Mr. Connelly: Then before signing the deposition, the witness added:

"I have clarified what my duties were later on." And turning to page 33, he testified on June 6th in that connection:

"I should also like to clarify what my duties were exactly during the freezing 536
period. My principal duties were to check applications made by various departments to be submitted to the Foreign Funds Control for Licenses. My checking would be to see that the application was in proper form. I would then return it to the respective department who would submit it to the per proc agent in charge of that department for signature. It would be returned to me for notarization. It would then be submitted to the Treasury Supervisor in charge of the New York Agency.

537

"Q. By Department, you mean a department of New York Agency, is that correct? A. That's correct.

"Q. And by these applications of which you have been speaking, you mean applications for licenses which the Agency itself was preparing? A. That's correct. I can add on there also that one of my duties was to familiarize myself with the regulations pertaining to the freezing."

Mr. Connelly: And one further amplification of that same testimony at the bottom of pages 34 and 35:

538 *Examination of Eugene J. Mulligan Before Trial.*

"Q. Now, in the case of an application which was being made by a remittee, if the remittee had telephoned you and had asked you what entries would be made in the Agency's books, and from what bank funds would be paid if the license were granted and payment made, would it have been your duties to furnish that information? A. Yes.

"Q. Now, then, you say you don't remember whether or not you had a talk with Mr. Kenney in which you gave him the type of information which we have been talking about, is that right? A.
539 That's correct.

"Q. But you don't deny that you might have had a talk with him and given him that kind of information? A. No, I don't."

Mr. Connelly: Now, going back to page 9, top of the page:

"Q. Are you familiar with what Mr. Hapke's duties were in the cashier's department? A. I believe I answered that before, Mr. Simpson, that I wasn't thoroughly acquainted with all of his duties.

540 "Q. Can you outline to us some of his duties in connection with making payment in New York on instructions from the home office in Yokohama? A. That I don't think I would be able to answer truthfully.

"Q. Well, we will take a specific case. When a telegram was sent to the Agency, instructing it to make payment in New York to a designated payee, to whom would that telegram first go?"

Mr. Bayles: At this point, your Honor, in view of the prior testimony of the witness that he is not familiar and could not truth-

fully answer exactly the procedure, I object to this particular question.

The Court: Overruled.

Mr. Bayles: Exception.

Mr. Connelly: (Reading):

A. It would go to the agents.

"Q. That is, either to Nishi or Araki? A. Not necessarily. Araki was a per proc, not an agent.

"Q. Was there more than one agent there? A. Yes. There were two"——

542

Mr. Connelly: He said originally, and then it was corrected to read "three, but one left around September 1941."

"Q. Who was the other agent? A. T. Kanai; and then from there it would go to Araki as per proc agent in charge of the cashier's department.

"Q. Does that apply to the time prior to the freezing regulations as well as the time after the freezing regulations? A. Yes.

"Q. And from Araki, would the telegram then be given to Hapke to take care of?"

543

Mr. Connelly: The first answer was "That's correct"——

Mr. Bayles: Pardon me. I object to counsel reading in the witness's first answer. I believe this witness was entitled to correct this testimony, in accordance with recollection, and I don't believe that counsel should read in what purports to be a first answer.

Mr. Connelly: I am not suggesting he hasn't the right to correct it, but I am certainly entitled to bring out a correction was made.

544 *Examination of Eugene J. Mulligan Before Trial.*

The Court: It is a part of the record.

Mr. Connelly: The first answer was: "That's correct." And then subsequently that was stricken out in ink, and in ink inserted:

"I believe it would be turned over to Mr. Hapke if he were there, but what he did with it I don't know."

Mr. Connelly: Page 12.

545 "Q. Mr. Mulligan, Mr. Bayles has handed me a photostatic copy of what appears to be a cable dated August 29, 1941. Have you seen that before? A. Yes.

"Q. Have you seen the original of that? A. Yes."

Mr. Connelly: Counsel has just produced the original of the cable referred to, being a cable from Yokohama Specie Bank, Yokohama, to Yokohama Specie Bank, New York Agency, dated August 29, 1941; and I offer that cable in evidence.

546 Mr. Bayles: No objection.

(Received in evidence as Plaintiff's Exhibit 11.)

Mr. Connelly: Continuing with the deposition, reading from page 13, the third question from the end:

"Q. Looking again at (the document which has been marked in this trial as Exhibit 11), Mr. Mulligan, it reads: '91781 STANDARD VACUUM OIL CO DOLLARS 557 THOUSAND 561 CENT 25. OKADA'. Do you know what that number stands for? A. You mean 91781?

"Q. Yes. A. That is the test key evidently.

"Q. Do you know what Okada stands for? A. I believe he is the manager of the Yokohama office."

Mr. Connelly: Now, turning to page 14, last question:

"Q. Mr. Mulligan, I show you what purports to be a copy of a letter dated August 29, 1941, addressed to Standard Vacuum Oil Company and signed Yokohama Specie Bank, Ltd. (the original 548
of which has been marked in evidence at this trial as Plaintiff's Exhibit 7), and ask you if that copy of the letter refers to this cable dated August 29, copy of which has been marked (substituting exhibit number) Plaintiff's Exhibit 11 here? A. That's correct."

Mr. Connelly: Page 15, top of the page:

"Q. I show you a letter dated August 29, 1941, addressed to Standard Vacuum Oil Company, and signed Yokohama Specie Bank, Ltd., and followed by a signature which I can't read, and underneath 549
the signature the words 'P. P. Agent.,' (referring again to this letter which has just been marked Plaintiff's Exhibit 7 at this trial), and ask you if you can tell me whose signature that is? A. That looks like Araki's signature.

"Q. Are you familiar with his signature, or were you at that time? A. I was at the time, but it's a long time since then. I would say it is Araki's signature."

Mr. Connelly: Now, reading at page 19, bottom of the page:

"Q. Upon receipt of the original of this cable (being the cable marked Plaintiff's Exhibit 11 at the trial), if it were handled in the ordinary fashion, it would be given first to the agent, then by him to Mr. Araki? A. No, not by him, Mr. Simpson. By the cable department. After the agent saw the cable, a copy would then be given by the cable department to the per proc agent in charge of the cashier's department.

"Q. Who was Mr. Araki; right? A. Who in this case was Mr. Araki.

"Q. And Mr. Araki would then turn it over for processing to Mr. Hapke, is that right? A. That's correct."

Mr. Connelly: Page 24, bottom of the page:

"Q. Did the Agency ever receive from Yokohama any revocation of the instructions contained in the cable of August 29th? A. That I could not say.

"Q. Have you examined the files of the Agency to find out whether any such revocation was received? A. No.

"Q. Will you do that? A. Yes.

"Q. Do you know whether the Agency at any time after August 29th advised Standard that the instructions received in the cable had been revoked? A. That I could not say.

"Q. Will you examine the files to see whether there is any such communication? A. Yes."

Mr. Connelly: Then moving ahead to page 36 for a moment, at the resumption of the examination Mr. Mulligan was asked these questions and gave these answers:

"Q. Have you been able to find any revocation of the cable of August 29th? A. No."

Mr. Connelly: That is, referring to the exhibit which has been marked here as Plaintiff's Exhibit 11:

"Q. You have not been able to find a revocation by the office which sent that cable? A. I haven't been able to find a revocation.

"Q. Have you searched the records in order to try to find such a revocation? A. I have.

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"Q. Have you searched the records to see whether there was any revocation given of the letter dated August 29 (Plaintiff's Exhibit 7) from the Agency to Standard Vacuum Oil Company? A. I have searched for any subsequent communications.

"Q. Have you found any revocation of that letter? A. I haven't found any."

Mr. Connelly: That is the original answer; then added in ink "subsequent communication." Then, going back again to page 26:

555

"Q. Well, do you know what books and records were kept in the cashier's department? A. Well, they had a register of T. T. and bills payable.

"Q. What type of entry was made in that register? A. The entries in that respect would be made in regard to the cable transfers which they were authorized or that they had received from their various branches, and the bills payable would be drafts drawn by the various branches on New York.

556 *Examination of Eugene J. Mulligan Before Trial.*

"Q. And would a cable such as the one of August 29 (Exhibit 11) be entered in that register? A. Are we talking about August 29th?

"Q. I am talking about a cable such as that. Do you draw a distinction in dates? A. Prior to and after the freeze, yes.

"Q. What was done with cables similar to that of August 29 received prior to the freezing order? A. The ones received prior to the freezing order would have been entered in the T. T. register.

"Q. The book you have referred to is a record
557 kept in the cashier's department? A. That's correct.

"Q. You have produced a book entitled 'Register of bills and T. T. payable' July 1941 to blank, and I ask whether that is the book which you have referred to? A. That's right.

Mr. Connelly: I now offer in evidence photostatic copies of the ledger pages of the register of bills and T. T. payable, produced by Mr. Mulligan, covering the period January 1941 through December 1941.

Mr. Bayles: I have no objection, your
558 Honor.

Mr. Connelly: To be sure that the description is correct on the record, this refers of course only to bills and T. T. payable from Yokohama.

Mr. Bayles: No objection.

(Four sheets of photostatic copies received in evidence as Plaintiff's Exhibit 12.)

559

HAROLD MIDTBO, residing at 926-76th Street, Brooklyn, New York, called as a witness on behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct examination by Mr. Connelly:

Q. Mr. Midtbo, are you presently associated with the Standard Vacuum Oil Company? A. I am.

Q. In what capacity? A. As assistant treasurer.

Q. Your office is here in New York? A. Yes, sir. 560

Q. For how long have you held that position of assistant treasurer? A. Since May 1942.

Q. Prior to that date, for how long had you been employed by the Company? A. I was employed with Standard Vacuum Oil since July 1, 1934, and with the predecessor company for a period of about eight months.

Q. Beginning in 1934, what positions did you hold with the company? A. From July 1, 1934, until the end of 1940, I was in the accounting department of Standard Vacuum Oil; and beginning in January 1941 to date, I have been with the 561 Treasurer's department.

Q. Now, confining your attention for the moment to the period from January 1941 to August 1941, did your functions include the handling of cable remittances received from the Yokohama office of Standard Vacuum? A. Yes, sir.

Q. Have you at my request examined your records of cable remittances received from Standard Vacuum at Yokohama, through the Yokohama Specie Bank from January through July 1941? A. I have.

562 *Harold Midtbo; for Plaintiff—Direct.*

Q. Are these the records which you have examined in that connection (showing papers to witness)? A. They are.

Q. And what are those records, Mr. Midtbo? How are they described? A. At the top of the first sheet in each case is the monthly report of exchange quotations received each month from our Japan division. On the reverse side of the first sheet is the record of the remittances made during that month, and it is that record that I examined.

563 Mr. Connelly: At this time I should like just to have these marked for identification as Plaintiff's Exhibit 13, A, B, C, D, E, F. Counsel for the defendant has suggested a means of perhaps expediting this particular phase of the proof. We have had prepared a schedule entitled "Schedule of Remittances Made by Standard-Yokohama through Yokohama Specie, Yokohama and paid to Standard in New York by the Yokohama Specie Bank, New York Agency in 1941," which schedule shows first the date and amount of remittance as shown by re-
564 mittance report of Standard's-Yokohama office—being the document which has just been marked for identification as Plaintiff's Exhibit 13; and on the right hand side, date and amount of payment by Agency to Standard in New York as shown by Agency's records, those being the records which have been marked Plaintiff's Exhibit 12 in evidence. As I understand it, counsel concedes, subject to correction, that this schedule correctly sets forth the information which it purports to set forth.

Mr. Bayles: That is right.

Mr. Connelly: Therefore I offer in evidence this schedule.

(Schedule received in evidence as Plaintiff's Exhibit 14.)

Q. Mr. Midtbo, with reference to the various remittances made during 1941 through the Yokohama Specie Bank, as shown in Plaintiff's Exhibit 14, will you describe the standard procedure followed by yourself in connection with advice to you and from you concerning those remittances? 566
A. Our first advice was usually the receipt of a cable from our Yokohama branch. That cable informed us that the Yokohama branch had made a remittance of a certain amount through—and then it named the bank. Usually that bank was the Yokohama Specie Bank.

Upon receipt of that cable, I usually gave the New York Agency a ring on the telephone, asking for Mr. Hapke, and then I would tell him that I had received this cable advising of the cable remittance from our branch and inquiring whether the New York Agency had received similar instructions to pay us. 567

Q. That is to say, similar instructions from Yokohama Specie in Japan? A. From Yokohama Specie in Japan.

Q. Yes? A. And usually the Agency were in receipt of those instructions, or within the next hour or two they would receive them. And if at the time I called them first, they hadn't received them, then I would usually ask them to give me a ring on the telephone when the instructions had been received, so that we might know when to expect their check.

568 *Harold Midtbo, for Plaintiff—Direct.*

Q. Then what happened after you both had advised each other that the instructions had been received from the respective Japanese sources? A. The New York Agency then usually sent its check down by messenger to the Standard Vacuum cashier.

Q. So far as your experience goes, Mr. Midtbo, was there any instance in which the Standard Company in Yokohama sent a cable remittance through Yokohama Specie Bank, that payment was not made when it was paid by the New York
569 Agency of Yokohama Specie?

Mr. Bayles: Are you limiting that to a period?

Mr. Connelly: Mr. Midtbo's entire experience.

A. I am not sure——

Q. Is that question a little awkward? I am afraid it is. Let me try again: So far as your experience and within your experience, Mr. Midtbo, do you know of any instance in which the Yokohama office of Standard Vacuum sent a
570 cable remittance through Yokohama Specie Bank, and that cable remittance was paid to the Standard office here in New York, in which payment was made by some bank other than the New York Agency of Yokohama Specie? A. Do I understand you are asking whether remittances were ever made from the Yokohama-Standard office to New York through another bank other than the Yokohama Specie Bank?

Q. No, I am afraid I still haven't made my question clear. I am asking whether you know of any instance in which arrangements were made by the Yokohama office of Standard Vacuum to

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send a cable remittance through the Yokohama Specie Bank in Japan, in which payment was not ultimately made by the New York Agency of Yokohama Specie Bank?

Mr. Bayles: One second. I object. I don't believe the witness can testify as to what arrangements were made in Japan in each case.

Mr. Connelly: I am asking simply for his own experience.

The Court: Confine it to your own knowledge.

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A. Every time our Yokohama branch advised us that they were remitting through the Yokohama Specie Bank, payment was made to us in New York through the New York Agency of the Yokohama Specie Bank.

Q. That is up to August of 1941? A. Yes.

Q. I show you Plaintiff's Exhibit 8 Mr. Midtbo, and ask you if at or about the time of the receipt of that cable by the New York office of Standard, it came to your attention? A. It did.

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Q. What did you do then? A. I received this cable on August 28, 1941, at which time I immediately put in a telephone call to the New York Agency of the Yokohama Specie Bank. I spoke to Mr. Hapke, who was known to me as the——

Mr. Bayles: I move to strike it out. I object to that, if your Honor please.

Q. Just what you spoke to Mr. Hapke about. A. I advised Mr. Hapke that I received a telegram from our Yokohama branch, advising that they were remitting $557,561.25, and asked him whether

574 *Harold Midtbo, for Plaintiff—Direct.*

Yokohama Specie Bank, New York Agency, had received similar instructions to pay us.

Mr. Hapke advised me that up to that time they had not received those instructions. I then asked him if he would be sure to call me just as soon as they had received word from their Yokohama branch.

I also spoke to him at the time about the fact that a license from the United States Treasury would be required before the payment could be made, and suggested to him that if the New York
575 Agency had no objection, that we would prefer that Standard make the license application.

Q. What did he say to that, if you can recall? A. I believe that on that conversation of August 28th, that he told me that he thought the Agency would have no objection. I know that that was later confirmed. Whether it was the same day——

Mr. Bayles: Will you just confine yourself to your conversation of August 28th, please?

Mr. Connelly: Well, I must submit that
576 the witness should be allowed to give his answer. He has given his best recollection of the conversation. He said he isn't quite sure whether this particular statement was made that day or the next day.

The Witness: It was discussed that day, and I was told, either that day or the next day, that the New York Agency had no objection.

Q. Now, have you given us the substance of that telephone conversation as nearly as you can recall it? A. Yes.

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Q. All right. What happened next? A. The next day Mr. Hapke called me back.

Q. That is on August 29th? A. On August 29, 1941.

Q. Yes? A. He called me back, and said the New York Agency had now received instructions from its Yokohama office to pay Standard Vacuum $557,561.25. We confirmed those figures —in other words, I confirmed to him that his cable instructions agreed with our instructions to receive.

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And then I advised him that we would immediately proceed to submit a license application, and that we hoped to do it that day. I told him that we would advise him just as soon as the license was received. Mr. Hapke was very anxious that——

Mr. Bayles: Pardon me. I object.

Q. You are not permitted to say that he was anxious or appeared. Just what he told you. A. I see. Mr. Hapke asked me to call him just as soon as a license was received. He specifically asked that I give him a ring on the telephone, rather than just send the license by messenger up to the Agency.

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Q. Have you now given us, as near as you can recall, the substance of that second conversation? A. I have.

Q. Was it any part of your duties, Mr. Midtbo, to prepare applications for Treasury licenses? A. Not at that time.

Q. And did you thereafter receive any written communication from the Yokohama Specie Bank, Ltd., with reference to that cable remittance? A. Yes.

580 Q. I show you Plaintiff's Exhibit 7 in evidence, and ask you whether that is the comunication which you received. A. It is.

Q. Now, following August 29, 1941, did you have any further conversations, telephone conversations or otherwise, with Mr. Hapke or anyone else at the New York Agency of Yokohama Specie, with reference to this cable remittance? A. I did.

Q. Approximately how many such conversations did you have? A. Well, during the week following Friday, the 29th of August, I would say
581 that I spoke to Mr. Hapke two or three times; and that in the weeks following that through to the month of November, that I probably spoke to him on the telephone once or twice a month at least.

Q. And without attempting to detail each particular conversation, will you state in substance the subject of those conversations between you and Mr. Hapke? A. Well, in each case it was Mr. Hapke at the New York Agency who gave me the telephone ring. The purpose of his telephone ring——

582 Q. No, not the purpose; just the substance? A. In each case he asked whether we had yet received any word as to the Treasury license; and in each case I advised him that we had not yet received the Treasury license.

Q. Now, at any time during that period of time, did Mr. Hapke or anyone else of Yokohama Specie, New York Agency, ever state to you in words or substance, that there was any proposal to modify, change or alter the arrangement which had been made, with reference to the cable remittance?

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Mr. Bayles: I object to the question. The witness has testified he has had no further conversation except in certain respects —no, I withdraw the objection to that question.

(The question repeated by the stenographer.)

A. He never did.

Mr. Bayles: No, one second, I do object to the word "arrangement," your Honor, and I should like if Mr. Connelly will clarify what he means by "arrangement"; I have no objection to the question.

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Mr. Connelly: I have no objection to modifying it. Does the witness understand the question?

The Court: Leave out the word "arrangement."

(Question repeated by the stenographer as follows: "Now, at any time during that period, did Mr. Hapke or anyone else of Yokohama Specie, New York Agency, ever state to you in words or substance, that there was any proposal to modify, change or alter"——)

585

Q. (Continuing) —the transaction with reference to the cable remittance? A. The answer is the same.

Q. What was that answer? A. They never did.

Q. Mr. Midtbo, throughout the entire year 1941, or during such portions of it, after you communicated with the Yokohama Specie Bank, New York Agency, on the subject of cable remittances, did

you ever talk to anyone at the bank other than Mr. Hapke? A. No, sir.

Q. And did anyone at the bank, other than Mr. Hapke, ever call you with reference to cable remittances? A. Not that I recall.

Q. Is that equally true for a period of time prior to 1941—withdrawn. You have already testified you didn't get into that work until January 1941.

Mr. Connelly: You may examine.

587

Cross examination by Mr. Bayles:

Q. Just to clarify the last few questions, Mr. Midtbo: Did you ever call and ask for anyone at the Agency besides Mr. Hapke? A. On the subject of telegraphic remittances?

Q. That is right. A. No.

Q. In other words, you asked for him by name? A. I did.

Q. Now, have you any recollection as to the number of telegraphic remittances which were paid by New York Agency to Standard, New York,
588 in the year 1941? Just the number? A. The number?

Q. Approximately. A. The number is on that list that was just submitted.

Q. (Handing Plaintiff's Exhibit 14 to the witness.) A. 16.

Q. And can you testify that you personally made a telephone call in connection with each one of these 16 remittances? A. In connection with the two received in January, I am quite sure I had nothing to do with them. They were received very early in the month, but beginning with the month of February, I had something to do with each remittance.

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Q. I am not asking that. Something to do with the telephone conversations. A. May I clarify that?

Q. Surely. A. It wasn't always necessary to call.

Q. No, please. Just say and answer this question, please, Mr. Midtbo: Did you personally, as an employee of Standard, always telephone the New York Agency in connection with each one of these remittances specified in Plaintiff's Exhibit 14? A. No.

590

Q. You were not an officer at all of Standard Vacuum Oil in 1941, were you? A. No, sir.

Q. You were employed in the Treasurer's Department? A. Yes, sir.

Q. Now, can you testify that in each case, each one of those remittances on Plaintiff's Exhibit 14, Mr. Hapke personally telephoned you in each case? A. With the exception——

Q. Excluding the January 1941 items? A. Excluding the January remittances, I believe that Mr. Hapke called on each of the others.

Q. You are not certain? A. Not certain to this extent: That sometimes we called before.

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Q. When you say "we," you personally? A. That's right, beginning in February.

Q. But you testified that you are not certain that you made each one of these calls? A. Well, naturally it's 1946 now, and to recall each of the telephone conversations in 1941 is really beyond me.

Q. That is all I want to drive at. Your recollection, Mr. Midtbo, is not very clear about each of the telephone conversations that Mr. Hapke made and you made to him? A. My recollection is clear as to the general practice of the department.

592 *Harold Midtbo, for Plaintiff—Cross.*

Q. Very well. Now, did you inquire in connection with remittances from any other branch of Standard, besides its Yokohama branch? A. Did I handle?

Q. Or inquire. A. It was part of my responsibility in that period of 1941 to supervise the receipt of all cable remittances from all Standard Vacuum's branches and subsidiaries.

Q. Now, your recollection of the transaction in 1941 as to the number of remittances that were paid to Standard New York by Yokohama Specie
593 Bank, New York, is approximately 18 or thereabouts, 18 remittances? A. Well, of course that is not a recollection. That is the fact that I just checked.

Q. You checked that fact from all your records of Standard Vacuum Oil, New York? A. I check that against the monthly report of exchange quotations, which on its reverse side has a record of remittances. The reason I am willing to stand on that statement and say that that is a complete list is that it is a part of the internal practice of our company, the reason——

594 Q. Pardon me, Mr. Midtbo. As to reasons I object and move to strike out the answer.

The Court: Strike it out.

Q. In other words, if I were to tell you that there were about 80 or 90 remittances paid by Yokohama Specie Bank, New York, to Standard in New York, you wouldn't have any knowledge of the other 75 or 80? A. Cabled remittances?

Q. Cabled remittances. A. From Standard Vacuum, Yokohama branch?

Q. I am not saying that. Cabled remittances from Yokohama Specie Bank, New York, to

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Standard-New York; you wouldn't have any knowledge as to any other remittances, is that correct?

Mr. Connelly: I am going to have to object to the question. It is a little obscure. I don't know what counsel means.

Mr. Bayles: If you don't understand, I will be glad to rephrase it.

The Witness: I am not sure that I do.

596

Q. All right. See if I can get it this way: You testified you handled in some way, in some fashion for Standard-New York, telegraphic remittances from about February 1941 on; is that correct? A. That's correct.

Q. And any remittance, telegraphic remittance which was made by Yokohama Specie Bank—pardon me—I am referring to remittances and payment made in connection therewith, by Yokohama Specie Bank, New York, to Standard-New York; I am referring to any remittance, irrespective of the source of remittance. You understand the question? A. Well, maybe you and I don't speak the same language as far as the definition of the term "remittance." You see, that is a specialized term in our business.

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Q. That is a cable remittance I am talking about. A. A cable remittance originating at an office—originating at a Far Eastern office of Standard Vacuum, where a branch of that Company transmitted funds from its branch overseas to its New York office. That is a remittance.

Q. I see. A. As we use the term.

Q. I understand it so too, Mr. Midtbo. A. All right.

598 *Harold Midtbo, for Plaintiff—Cross.*

Q. Well, then, did you handle remittance from any other office of Standard abroad, other than Yokohama? A. I did.

Q. And have you checked to see whether any remittances were made in the year 1941 from other branches of Standard, other than Yokohama? A. Well, I know that there were many, many remittances made.

Q. That is the point I am driving at, Mr. Midtbo. Apart from the schedule which counsel has produced today, showing remittances from
599 the Yokohama branch of Standard, there were a number of other remittances made through branches of Standard located throughout Asia—possibly China and Japan—which were paid to Standard, New York, by New York Agency of Yokohama Specie Bank, is that correct? A. That's possible.

Q. You haven't checked that? A. I have not.

Q. Now, in connection with these remittances during the year 1941, prior to this August 29, 1941 item, do you recall receiving any letter from the New York Agency of Yokohama Specie Bank
600 in connection with these remittances? A. No.

Q. I believe that, giving the customary procedure that Standard followed, wasn't it customary also for Standard, when it received a check from the New York Agency on the same date of the cable remittance—wasn't it customary for Standard-New York to get with that check an accompanying letter of advice from the New York Agency of Yokohama, and also a receipt which was to be signed by Standard-New York? Isn't that the customary procedure? A. To the best of my knowledge, the customary procedure was that a receipt in triplicate accompanied each check,

and that the receipt asked that the duplicate and triplicate——

Q. Pardon me; as far as the terms of the receipt, I will produce those in evidence. I am just getting at your procedure now. In addition to that, wasn't there a letter accompanying the check? A. I don't ever recall seeing a letter.

Q. But you wouldn't receive the check, would you? A. No, sir.

Q. That would go to another department? A. That's right.

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Q. Now, isn't it possible that on all these remittances for payments made by New York Agency of Yokohama Specie Bank to Standard-New York —isn't it possible that checks were received by Standard-New York without any prior conversation at all? A. It is possible.

Q. And without any telephone conversations? A. It is possible.

Q. By either side? A. That is right.

Q. And I believe that prior to the Japanese freeze on July 26, 1941, in your previous examination you testified you spoke to Mr. Hapke about once or twice each month, is that correct? A. Prior to the freeze?

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Q. That is right. A. That is right.

Q. And that was approximately all you did speak to him during that prior time? A. To Mr. Hapke; that is right.

Q. Did you make any written memorandum of your telephone conversation of August 29th or August 28th? A. I did not.

Q. Or with respect to any of the subsequent telephone conversations which you state you had with Mr. Hapke, after that date? A. I did not.

604 Q. Well, now, did you ever know, in 1941, Mr. Hapke's first name? A. In 1941 I did not know it.

Q. Did you ever see Mr. Hapke in 1941 or prior thereto? A. Up to August 29th?

Q. That is right. A. I am quite sure that up to August 29th, 1941, I never saw Mr. Hapke.

Q. Now, did you receive any other letter from the New York Agency of Yokohama Specie Bank, Ltd., during the freeze, other than Plaintiff's Exhibit 7? A. That I can't answer offhand.

605 Q. You don't know whether you did or did not? A. No, I don't.

Q. Do you recall any conversation with Mr. Hapke—I withdraw that, please. When did Standard-New York receive this letter of August 29, 1941? The date, please? A. It was received by Standard Vacuum on September 2, 1941.

Q. And you read over the letter when it was received? Did you read over the letter when it was received? A. I did.

Q. As a matter of fact, it was addressed to your attention, is that correct? A. It came to my

606 attention, that is correct.

Q. That letter was in substance a confirmation of your telephone conversation of August——

Mr. Connelly: I object to that on the ground the document speaks for itself.

The Court: Sustained.

Q. Well, in 1941, in this conversation of August 28th and 29th, you stated that mention was made by you or by Hapke—it is immaterial—as to the necessity of procuring a license, a Treasury license; is that correct? A. That's correct.

607

Q. You were familiar with the general requirements of licenses at that time, in general? A. In general, yes.

Q. And you knew that they had to be submitted to the Federal Reserve Bank? A. I did.

Q. Now, you stated that in your conversation you had agreed with Mr. Hapke that you would submit an application immediately or promptly? A. That's correct.

Q. As a matter of fact, wasn't an application prepared on August 29th? A. An application was prepared on August 29th.

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Q. Prior to the receipt of this letter, is that correct? A. Prior to the receipt of the letter? Yes.

Q. As a matter of fact, it was sworn to on August 29, 1941, isn't that correct? A. I believe that is correct. It is a matter of record.

Mr. Connelly: It is in evidence.

Mr. Bayles: That is right.

Q. Now, you knew at the time that the Federal Reserve Bank might take a little while before it either approved or disapproved or acted upon an application; didn't you know that? A. I did not.

609

Q. You didn't know how long a period of time it would take? A. I did not.

Q. For the Federal Reserve Bank to do something about that application? A. From my experience, it has taken anywhere from a half an hour to—well, how many years has it been since 1941?

Q. Well, several months at least, is that right? I mean a long period of time. A. Not the usual thing.

Q. Not the usual. Well, then, you do know at times the Federal Reserve Bank did take some time before it acted upon an application for a license? A. I know that.

610 Q. Is that correct? A. It takes some time, yes. That is, anywhere from five minutes up. That is correct.

Q. Now, in this conversation that you had with Mr. Hapke on August 28th and August 29th, how long did you understand these particular cable instructions were going to be kept open? A. Indefinitely.

Q. Indefinitely? A. Yes.

Q. Indefinitely, you say? A. Why, certainly. After all——

611 Q. Indefinitely——

Mr. Connelly: Let the witness answer, if you want to ask him his understanding.

Mr. Bayles: I am not asking his understanding.

Mr. Connelly: That was the question.

Mr. Bayles: I said "indefinitely."

Q. And is the answer "indefinitely"? A. I said "indefinitely."

Q. In other words, forever, so far as you know? A. Well, that's until something else was done

612 about it; that's true.

Q. Until the Treasury Department acted upon it, is that correct? A. No, sir. The action of the Treasury had no bearing on whether the remittance was still open.

Q. That is your interpretation? A. Yes, sir.

Q. All right. No further questions.

Mr. Connelly: That is all.

The Court: Take a recess of ten minutes.

(A short recess was taken.)

Mr. Bayles: If your Honor please, may I recall Mr. Midtbo for one or two questions?

The Court: Certainly.

HAROLD MIDTBO, was recalled to the stand and testified further as follows:

Cross examination by Mr. Bayles (Continued):

Q. On your direct examination, Mr. Midtbo, did you state the complete substance of the telephone conversations that you had with Mr. Hapke on August 28th and August 29th, and subsequent conversations? A. I believe I did. 614

Q. You didn't omit anything? A. Well, I don't think so.

Q. And you have a clear recollection of those particular conversations? A. I think I have.

Q. Just before the recess, you stated it was your interpretation as to the duration of these instructions—you gave your interpretation as to the duration of these instructions, is that correct? 615

Mr. Connelly: I will object to that, if the Court please. The testimony is in the record as to what he testified to; repetitious.

The Court: Sustain the objection.

Q. You did not speak to Mr. Hapke, and Mr. Hapke didn't speak to you in any of these conversations on August 28th or August 29th, or subsequently, as to the duration of the instructions; is that correct? A. That's correct.

Q. As I recall, you said that in 1941 you were not connected with making applications for li-

616 *Eugene J. Kenney, for Plaintiff—Direct.*

censes and didn't know the exact provisions of the freeze and the Trading With The Enemy Act, is that correct? A. I didn't know the exact provisions, but I knew the general——

Q. But not the exact details, is that correct? A. That is right.

Mr. Bayles: That is all. No further questions.

Mr. Connelly: That is all, Mr. Midtbo.

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EUGENE J. KENNEY, residing at 42 Prospect Street, Bernardsville, New Jersey, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Connelly:

Q. Mr. Kenney, what is your present occupation? A. I am president of the Bernards Inn Company, Incorporated.

Q. Have you any connection at the present time with the Standard Vacuum Oil Company? A. No,

618 I do not have.

Q. Were you in 1941 associated with the Standard Vacuum Oil Company? A. Yes.

Q. In what capacity? A. Assistant Treasurer.

Q. For how long prior to 1941 had you been connected with the company and in what capacities? A. I was connected with Standard Vacuum Oil Company since January 1, 1934; up to 1940 in the capacity as assistant secretary, and from 1939 to 1945 in the capacity of assistant treasurer.

Q. There was a period of time during which you held both offices—assistant secretary and assistant treasurer; is that correct? A. Yes, sir. Approximately a year.

Q. During the period from 1939, when you first became assistant treasurer, and continuing until 1945, did you have as part of your duties anything to do with the receipt of cable remittances from foreign offices of Standard Vacuum? A. Yes, sir.

Q. During what period of time did you have direct charge of those cable remittances? A. From 1939 until 1942, until Mr. Midtbo entered the department.

Q. That is to say, Mr. Midtbo in 1942 succeeded 620
to your position or your function in connection with cable remittances? A. That is correct, sir. I may be wrong on the exact date.

Q. Approximately it. During the period from 1939 to 1941, inclusive, did you ever have occasion to consult anyone at the New York Agency of Yokohama Specie Bank in connection with cable remittances? A. Yes, I did, sir.

Q. With what person or persons in the New York Agency of Yokohama Specie Bank did you have communication? A. Mr. Hapke and Mr. Mulligan.

Q. Did you communicate with both of those 621
individuals on questions concerning the payments of cabled remittances? A. I believe not. Mr. Hapke, I believe, is the only gentleman I ever consulted on the cable remittances.

Q. What was in general the subject of your communication with Mr. Mulligan in that connection? A. In most instances dealing with the letters of credit and collecting funds thereunder, and establishment of overdraft facilities in Japan.

Q. In or about July of 1941, when the Foreign Funds Control Regulations were extended to Japan, did you have any function in connection

622 with the application for Treasury licenses? A. Yes, sir. That was my responsibility from the initiation of the Freezing Act.

Q. I show you Defendant's Exhibit F, an application for a Treasury license with reference to a cable remittance of $557,561.25, and ask you whether that application was prepared by you or under your supervision? A. Yes, sir, it was.

Q. In connection with the preparation of that application, did you have any conversation, telephone or otherwise, with any representative of
623 the New York Agency of Yokohama Specie Bank, Ltd.?

Mr. Bayles: I would like to qualify the use of the word "representative."

Mr. Connelly: I think it appears sufficiently in evidence who Mr. Hapke was here, but I will rephrase the question:

Q. Did you have any conversation with anyone at the Yokohama Specie Bank, New York Agency, with reference to the making out of this application? A. Yes, sir, I did.

624 Q. With whom? A. Both Mr. Hapke and Mr. Mulligan.

Q. Which one did you talk to first? A. Mr. Hapke.

Q. Can you place the approximate date of that conversation? A. Yes, sir. It was on the date of the swearing to this application, August 29, 1941.

Q. That is to say, you had both conversations, one with Hapke, and one with Mulligan, on the same date, August 29th? A. Well, I had more than one conversation with Mr. Mulligan on that same day. A. But all of the conversations were

on the same date? A. All of the conversations were on that day, yes, sir.

Q. Will you state in substance what was said in the first telephone conversation you had with Mr. Hapke on that subject? A. The first conversation with Mr. Hapke, I advised him that I had learned that they had received instructions to pay us a sum of money and that a license would be involved from the Federal—the United States Treasury; and that, as it was my responsibility to assist in the preparation of such application for license, I wanted to confirm with him that they had received instructions to pay the money to us, including the amount. And I also questioned him as to what entries would be made on the books of Yokohama Specie Bank, New York, with respect to the application. 626

Q. What did he say to that? A. He confirmed that they had received instructions.

Mr. Bayles: Pardon me. May I object to the use of the word "confirmed"? If you will limit yourself to what he said, please—— 627

The Witness: He said he had received instructions to pay us the money $557,000 odd, but that he wasn't sure of the entries that would be made on the books of account, and referred me to Mr. Mulligan.

Q. Now, in that conversation did he speak of the sum of $557,000 odd, or did he give the specific number of dollars, $557,561.25? A. He gave the specific number of dollars, as I was interested in whether he had received the amount, for application purposes.

628 *Eugene J. Kenney, for Plaintiff—Direct.*

Q. All right. Have you given us, as you recall it, the substance of that conversation? A. That is the entire substance of the conversations.

Q. Did you thereafter speak to Mr. Mulligan on the telephone? A. Yes, sir.

Q. Will you give us the substance of that conversation? A. I repeated to Mr. Mulligan in general the conversation that I had had earlier with Mr. Hapke, and told Mr. Mulligan we were working on the preparation of an application for a Treasury license; and that among other things we
629 needed to know also the name of the account on their books which would be charged when the payment was made; and that we were interested in having the application complete and accurate, so that when the license was received, it would permit his bank to properly make entries on its books. I believe that was the substance of the first conversation with Mulligan.

Q. What did he say to that? A. He gave me the information; that the name of the accounts on their books, with the New York Agency's books, was Yokohama Specie Bank, Yokohama, Japan.
630 That was the name of the account which the New York Agency would charge.

Mr. Bayles: I don't object to your reading, Mr. Kenney, provided you have no present recollection of this conversation.

The Witness: I read it, sir, in the interest of accuracy.

Mr. Bayles: That is the point I am making. If you want to refresh your recollection, you can do so; but I do object to your reading from any paper there.

Q. You read the words from the application, did you, appearing in the second paragraph under subdivision capital B: "Account in the name of Yokohama Specie Bank, Yokohama, Japan." Were those the words you just read from the application? A. I read the words, "Yokohama Specie Bank, Yokohama, Japan."

Q. Right. Now, do you have any present recollection whether Mr. Mulligan told you that was the account that would be charged on the books of the Agency? A. I am certain he did, sir.

632

Q. All right. What else did he tell you? A. In a second conversation that day he did——

Q. Just before you get to that, have you now finished the substance of the first conversation? A. I think that was the substance of the first conversations.

Q. Then with reference to the next conversation with Mr. Mulligan, do you recall whether you called him again, or he called you back? A. I am certain I called him, sir.

Q. All right. Tell us what you said to him, and what he said to you in that next conversation. A. I said we had proceeded with the preparation of

633

the application, and it occurred to us there was another entity involved—the Guaranty Trust Company, or some bank—I didn't know the name of it at the time—which would also have to make entries on its books with regard to the transaction. I called him a second time and asked him if he could give me the name of the New York bank from which payment would be made to Standard Vacuum, and he replied the Guaranty Trust Company.

Q. Anything else? A. I think that was the substance of the second conversation, sir.

634 Q. Was anything said with reference to the account which Guaranty Trust Company would have to debit?

Mr. Bayles: Pardon me. I object to the question, your Honor. The witness has testified that that was the substance of the conversation.

Mr. Connelly: Simply trying to refresh his recollection. He has testified he doesn't recall anything else at the moment, and I

635 asked him whether anything was said in reference to that matter.

Mr. Bayles: I object to that as leading then.

The Court: Overruled.

Mr. Bayles: Exception.

Q. Do you have the question in mind?

(Last question repeated by the stenographer: "Was anything said with reference to the account which Guaranty Trust Company would have to debit?")

636 A. Yes, sir, there certainly was, because that was of equal importance in the application as the initial question as to which account with the Yokohama Specie Bank, New York Agency, would charge.

Q. What did he say on that subject? A. Well, he gave me the name of the bank, and the name of the account that that bank had on its books, which would be charged with the payment made to us.

Q. Do you remember now what that account was, that was carried on the books of Guaranty Trust Company? A. Yokohama Specie Bank, New York Agency.

637

Q. Have you now given us, as nearly as you can recall, the substance of that telephone conversation? A. Yes, sir.

Q. You testified, I believe, that you had still another conversation with Mr. Mulligan on that day. What was the substance of that conversation? A. The substance of the third telephone conversation was that we had completed the draft of the application which we were about to file, and that I would like to read to him the paragraphs relating to the transactions in the accounts, in order to see whether he felt the application was

638

satisfactory and covered the situation, and would permit, not only his bank but the Guaranty Trust Company, to charge the respective accounts.

Q. Now, can you tell us at this time the particular portion or portions of the application which you read to him over the telephone? A. May I refer to the application?

Q. Yes. You may look at the application itself. A. To the best of my knowledge, I read the entire second paragraph of the application to him.

Q. Will you just read that paragraph out loud, if you will, please? A. "Applicant respectfully

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requests that the license issued pursuant to this application authorize (1) the Yokohama Specie Bank, New York Agency, to pay the amount of such remittance out of funds such Agency has on deposit with the Guaranty Trust Company of New York, 140 Broadway, New York, New York, and to debit in respect thereof the account maintained on the books of the Yokohama Specie Bank, New York Agency, in the name of the Yokohama Specie Bank, Yokohama, Japan, and

"(2) The Guaranty Trust Company of New York to make payment to applicant of said

640 amount, and to debit in respect thereof the blocked account maintained on its books in the name of the Yokohama Specie Bank, New York Agency."

Q. Now, after reading that to Mr. Mulligan, what did he say to that? A. I don't know the exact words, but I believe he said he felt it would be satisfactory.

Q. Now, following August 29, 1941, did you have any further communications with Mr. Hapke or anyone else of the New York Agency of Yoko-
641 hama Specie Bank, with reference to this cable remittance? A. As near as I can recall, I had at least two.

Q. Can you place the approximate time of those conversations, first? A. Not very accurately, but I think within a period of two or three weeks following the August 29th conversations.

Q. With whom did you speak at the Agency of the Yokohama Specie? A. Mr. Mulligan.

Q. Mr. Mulligan? A. Mr. Mulligan.

Q. Did you call him, or did he call you? A. I called him.

642 Q. On both occasions? A. On both occasions.

Q. Will you state as nearly as you can recall, the substance of those conversations?

Mr. Bayles: Pardon me, sir. I believe, Mr. Connelly, in your bill of particulars you have limited the alleged subsequent conversations after August 29th 1941 between Mr. Hapke and Mr. Midtbo. There is no statement as to any alleged conversation between Mulligan and Kenney. In that connection, your Honor——

Mr. Connelly: May I see that? That is quite correct, if the Court please. I did not

learn until talking with this witness recently, that he as well as Midtbo had conversations with people at the New York Agency of the Yokohama Specie Bank; and I therefore move to amend the bill accordingly to permit proof of these additional telephone conversations.

Mr. Bayles: If your Honor please, this is a verified bill of particulars by the plaintiff in this action. There was also an affidavit submitted by Mr. Kenney, this witness, in the prior case that went up to the 644
Court of Appeals.

The Court: That does not affect the amendment to the bill of particulars.

Mr. Bayles: I quite agree. That comes as a complete surprise to me at this stage.

The Court: You expect to call Mr. Mulligan?

Mr. Bayles: He is here in court, your Honor.

The Court: He can testify as to the denial or confirmation of that conversation. I don't see any surprise in that respect. 645
Overrule the objection.

(Last question repeated by the stenographer as follows: "Will you state as nearly as you can recall, the substance of those conversations?")

A. These are conversations subsequent to August 29th?

Q. Yes. A. Well, the substance in each instance was substantially the same—that I advised Mr. Mulligan that we had not yet received a license, and had he heard of any word on the matter at all.

646 *Eugene J. Kenney, for Plaintiff—Direct.*

I think that was the entire substance of the subsequent conversations.

Q. Nothing else? A. Except that he replied he had not.

Q. Do you recall whether those conversations took place prior to the filing of the supplemental application for a license in December 1941? A. Yes, I am certain they did, sir.

Q. Was there anything said in either of those conversations concerning the possibility of filing supplemental application?

647

Mr. Bayles: Pardon me, your Honor, I object to that.

The Court: Overruled.

Mr. Bayles: Exception.

A. No, there was none, sir.

Q. You have given us now, as nearly as you can recall, the substance of those two conversations which you had with Mr. Mulligan? A. Yes. I think that is the substance, sir.

Q. Now, in either of those conversations, did Mr. Mulligan state to you that there was any

648 proposal to change the status of the transaction so far as the New York Agency of Yokohama Specie is concerned?

Mr. Bayles: I object to that, your Honor.

The Court: Overruled.

Mr. Bayles: Exception.

A. No, sir, he did not.

Q. Or did anyone at Yokohama Specie Bank, New York Agency, during the period August 29, 1941, to December 8, 1941, ever advise you of any proposal to change or modify the transaction in any respect?

Mr. Bayles: I also object to that.

The Court: Same ruling.

Mr. Bayles: Exception.

A. No. No one ever so advised me, sir.

Mr. Connelly: You may examine.

Mr. Bayles: No cross examination.

Mr. Connelly: That is all, Mr. Kenney.

The Court: We will take a recess until 2:00 P. M.

(A recess was taken until 2:00 P. M.)

AFTERNOON SESSION

EUGENE T. SINGER, the plaintiff, resumed the stand and testified further as follows:

Cross examination by Mr. Bayles (Continued):

Q. Mr. Singer, during recess, counsel has examined the books of Standard-New York in which these various entries were made which we are going to mention now. Now, the first entry that was made on the books of Standard-New York in December 1941 was pursuant to this particular voucher called "Office Journal No. M1571," is that correct? A. Yes, sir.

Mr. Bayles: I offer this Office Journal number in evidence.

Mr. Connelly: I have only the same objection which I made to prior documents. The same ruling?

The Court: Yes.

(Received in evidence as Defendant's Exhibit K.)

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652 *Eugene T. Singer, Plaintiff—Recalled—Cross.*

Q. Just in ordinary layman's language, Mr. Singer, under Defendant's Exhibit K, an account which Standard-Yokohama carried with Standard-New York was credited with $557,561.25, is that correct? A. Yes, sir.

Q. And at the same time a debit was made to a remittance account for that same amount, is that correct? A. Yes, sir.

Q. And that remittance account represented items in transit from Standard-Yokohama to Standard-New York, is that correct? A. Yes, sir.

653 Q. Now, on the same date as the entries made under Defendant's Exhibit K were made, entries were also made pursuant to Office Journal No. M 1544, which has been marked in evidence as Defendant's Exhibit C. I ask you to look at that (showing paper to witness). Is that correct? A. Yes, sir.

Q. Now, in ordinary layman's language again, under this particular exhibit, this particular remittance account which you just referred to was credited with that $557,561.25, and you have debited an account which is called "O" account.

654 Is that correct? A. That is a control account.

Q. And that is also similar to machine control account, is that correct? A. That's right.

Q. And those particular entries were made pursuant to voucher, Defendant's Exhibit C, is that correct? A. Yes, sir.

Q. Now, the third series of entries which was made in December 1941 is reflected——

Mr. Connelly: You say "in". "As of," Mr. Bayles.

Q. (Continuing)—as of December 1941, was made pursuant to Defendant's Exhibit B. I ask

you if that is correct (showing paper to witness)? A. That's right.

Q. In ordinary layman's language again, Mr. Singer, this particular account, a debit to control account which was set up under Defendant's Exhibit C, has now been credited with that same amount, and there was a debit to general profit and loss of the same amount? A. That's right.

Q. And those particular items were pursuant to, or these entries were made pursuant to Defendant's Exhibit B, is that correct? A. Yes.

Q. Now, as a result of these entries, which were 656
made as of December 1941, is it correct to say that the account which the Yokohama office of Standard had carried with the New York office of Standard was being reduced or written off as a bad, uncollectible debt, in the sum of $557,561.25? A. I don't think so, sir. I am wondering if your question shouldn't be the other way. There is no account in New York—you see, you keep referring to the account that Standard-Yokohama has. What we are discussing—the books we saw——

Q. Look, Mr. Singer, if the question is not clear, I will try to make it clear. Well, go right ahead. 657
I am sorry I interrupted you. Go right ahead and explain the net result of this whole transaction of December 1941? A. The account we looked at during the recess was an account carried on the New York books with the Standard-Yokohama. The first entry you showed me was the one crediting that office account with Yokohama on the New York books. That account hasn't been disturbed since.

The second account, the second group of entries, was a clearing from what was a suspension account here, and charging it to "p and l" on the books in New York. The net effect of all these entries——

658 Q. That is what I want. A. (Continuing)—was to give the Yokohama office account credit for the amount that they had remitted; and, not having collected the money in New York, charged it off to profit and loss.

Q. That is correct. These entries were made actually about what time during 1942, as of December 31, 1941? A. Sometime about the middle of the year. Sometime, I think about the middle of the year.

Q. But as of December 31, 1941? A. That's
659 right.

Q. In writing off this claim or this balance of $557,000 against the Yokohama office of Standard, or reducing it by that amount and writing it off as uncollectible, or in carrying out the entries which have been referred to on Defendant's Exhibits B, C and K, did Standard have any written memorandum or letter from its accountants? A. Not that I know of, other than the voucher.

Q. Have you made a search for any such memorandum? A. Well, I think if there had been any such memorandum, it would have been attached
660 to the voucher, sir.

Q. Was this particular charge-off as of December 1941 made under advice of counsel for Standard? A. I can't recall whether that particular entry was made under advice of counsel or not. I can't remember that particular entry.

Q. Wouldn't it have been likely for them to consult counsel before charging off a claim of half a million dollars? A. Not in the ordinary course, they wouldn't have.

Q. And apart from the writings contained in these various vouchers which have been offered in evidence, as to the basis for the credits and debits,

do you have any other memorandum—when I say "you," I refer to Standard—does Standard have any other memorandum referring to the basis for these debits and credits? A. Not that I know of.

Mr. Connelly: I might say, Mr. Bayles, pursuant to your request, I made that inquiry; and I am advised that there are none other than the memorandum which you have here.

Mr. Bayles: All right.

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Q. Now, were any entries made—or when was the next series of entries made on Standard-New York's books, in connection with this remittance? A. 1944.

Q. I have been handed two vouchers, or two journal numbers, and ask you, Mr. Singer, if you could point out which of these entries referred to in these vouchers came first? A. They are practically simultaneous; practically simultaneous.

Q. OK.

Mr. Bayles: I offer in evidence, if your Honor please, Standard Vacuum Oil Company journal voucher No. M-22 with two attached memoranda. 663

Mr. Connelly: I have no objection to them, other than what I understand to be my continuing objection to this entire line of testimony.

(Three sheets received in evidence as Defendant's Exhibit L.)

Q. Now, coming back to ordinary layman's language again, under Defendant's Exhibit L, there was a credit to general profit and loss of

664 *Eugene T. Singer, Plaintiff—Recalled—Cross.*

$557,561.25, and a debit to that intermediate account which you have called "O", or machine control account; is that correct? A. Yes, sir.

Q. And also the basis of that entry is referred to in the particular voucher? A. Yes.

Q. I show you Office Journal No. M-574 of Standard, which has been produced by counsel for Standard, and ask you whether or not these entries were made simultaneously as of December 31, 1944? A. Yes, sir.

665 Mr. Bayles: I offer in evidence Office Journal No. M-574.

Mr. Connelly: Same objection.

The Court: Same ruling.

(The two sheets received in evidence as Defendant's Exhibit M.)

Q. Coming back to layman's language again, as the result of the entries appearing in Defendant's Exhibit M, the main ledger account was credited in the sum of $557,561.25, and that would be the opposite of the machine control account, is that

666 correct? A. Yes, sir.

Q. And a debit was set up on the records of Standard-New York of a claim against New York Agency of Yokohama Specie Bank, Ltd., in the same amount? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And that particular claim against the New York Agency would be set up in an account called "Claims;" is that right? A. Yes, sir.

Q. Maintained by the Standard-New York? A. Yes, sir.

Q. Apart from these entries on the books of Standard-New York in connection with this par-

ticular remittance, were there any other entries in any other books? A. No other books.

Q. No other entries? A. No.

Q. This particular December 1941 charge-off as a bad, uncollectible debt, was included in the tax return for the end of that year by Standard? A. Could I ask you to state that question? Our vouchers didn't say "uncollectible." You say "bad and uncollectible debt."

Q. Well, did you take a tax deduction? A. Yes, sir.

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Q. In your return filed for the year 1941, for this $557,000 amount? A. Yes, sir.

Q. The use of the word "uncollectible," which I just mentioned, Mr. Singer, appears in Defendant's Exhibit B, does it not (indicating)? Would you mind just saying yes or no, please?

Mr. Connelly: Well, I object to that. The document speaks for itself.

The Court: It appears there. I can see it. I have seen it.

Mr. Bayles: Yes.

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Q. Now, am I correct, Mr. Singer, in saying that Standard was taking a deduction in its tax return of 1941 of a claim for balance of account against Standard-Yokohama in the sum of $557,000? A. Not against Standard-Yokohama, no, sir.

Q. I believe you testified that as a result of these entries in December 1941, the balance of the account which Standard-Yokohama maintained with Standard-New York was reduced by the sum of $557,000. A. Because of the remittance they made.

670 Q. It was reduced by that amount? A. Because of the remittance they made. It was, because of the remittance they made.

Q. And the effect, you testified, of the 1941 transaction or entries—the final result on Standard's records was that the balance due from Standard-New York to Standard-Yokohama was reduced by $557,000, isn't that correct? A. By the remittance, but not——

Q. By the sum of $557,000? A. By the remittance. Not by any write-off.

671 Q. You are perfectly right, Mr. Singer. But the write-off, you say, in December 1941 of this remittance which Yokohama-Standard was attempting to send to Yokohama-New York, is that correct? A. Standard-New York.

Q. To Standard-New York; pardon me. A. That's right.

Q. And that was the particular item that was deducted in your tax returns? A. That is right.

Q. As a bad debt? A. As a bad debt.

Q. On December 29, 1941, Mr. Singer, didn't you make this statement contained in your application, which is Defendant's Exhibit E, and which application is verified by you as treasurer of Standard: "Applicant (referring to Standard Vacuum Oil Company of New York) has been advised by reliable sources that there are adequate funds in New York of the Yokohama Specie Bank, New York Agency, to meet the outstanding liabilities of that Agency, and that the payment of the sum of $551,561.25 to applicant would not prejudice the interests of other domestic creditors of that Agency." Did you make that statement (handing paper to witness)? A. I think so.

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Q. The very last sentence of that? A. Yes, sir.

Q. Notwithstanding the information which Standard Vacuum Oil Company had on December 29, 1941, you nevertheless wrote off as uncollectible this particular remittance, is that correct? A. Sir, I object to the word "uncollectible." We did not write it off as uncollectible, standing by itself.

Q. You wrote this debt off or took a tax deduction, is that correct? A. We took a deduction on our tax return. We did not get the tax reduction.

674

Q. I am not asking, by the way—all right. You did take in the return you filed—you made a deduction of that amount? A. From income, yes, sir.

Q. That is the point. No further questions.

Re-direct examination by Mr. Connelly:

Q. Mr. Singer, you testified on cross examination that in your 1941 tax return, or the tax return for 1941, you claimed a deduction for the amount of $557,000 odd. Was that deduction allowed? A. No, sir.

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Mr. Connelly: That is all.

Re-cross examination by Mr. Bayles:

Q. One other question: When was that deduction disallowed? A. I couldn't tell you that from memory.

Q. What year? A. I couldn't tell you that from memory. It was on examination of the 1941 return. I couldn't tell you just when the Examiner was in.

Q. Did you get a report from the Treasury Department, or any assessment claim on that? A.

676 *Eugene T. Singer, Plaintiff—Recalled—Re-cross.*

The tax case is not actually closed yet. It is up for review down in the Department.

Q. But did that deduction come up after 1944, December 1944, or before that date, the disallowance? A. I couldn't tell you the exact time of that deduction. It would have to be in the period of the audit, or when they were discussing it with the Examiner.

Q. With your December 1941 return you paid tax only on the income, from which you deducted this $557,000, is that correct? A. Correct.

677 Q. Subsequently you say that this particular deduction was disallowed? A. Correct.

Q. Did you ever pay, or has Standard ever paid the additional tax? A. We have a large claim for refund on the 1941 taxes so that we did not have to pay any additional tax.

Q. Have you paid the taxes on this $557,000, which you say was disallowed subsequent to 1941? A. It will not be paid until the——

Q. Have you paid it, please? A. I can't answer your question. There is two tax years involved, and there is a settlement to be made with the

678 Treasury Department on which we have got a large claim. It will be deducted from our claim.

Q. When was that settlement made? A. This settlement is not made. It is under review by the Department, as I told you, sir.

Q. Mr. Singer, upon what ground did the Treasury Department disallow that deduction in 1941? A. I am speaking from memory, but in reviewing the case for the whole income tax year——

Q. No, this particular item. A. I am talking about the whole item. My recollection is that the Revenue officer, Revenue Examiner, wrote that he thought that was a collectible claim, and he should

not allow it as a deductible item in the 1941 income.

Q. Do you have any written report from that Examiner? A. I don't know whether we have the written report, but whether we have or not, it would be on the return, on the Agent's report.

Mr. Bayles: I have no further questions, your Honor.

Mr. Connelly: That is all, Mr. Singer. May it please the Court, I understand that it is conceded by counsel for the defendant that on August 28th and on August 29th, 1941, Yokohama Specie Bank, Ltd., Yokohama, maintained an account in its name with Yokohama Specie Bank, Ltd., New York agency, on the books of New York agency in New York; and that on both of those days—that on August 28th there was a credit balance in that account of $1,634,694.69; and on August 29th, $1,634,744.69. Is that conceded? 680

Mr. Bayles: Yes, it is.

Mr. Connelly: It is also conceded that on August 28th and August 29th, 1941, Yokohama Specie Bank, Ltd., New York Agency, maintained an account in its name on the books of Guaranty Trust Company of New York, and that there was a credit balance in that account on August 28th of $959,994.09; and on August 29th of $951,680.86. 681

Mr. Bayles: Yes. So conceded.

Mr. Connelly: The plaintiff now offers in evidence document produced by counsel for the Superintendent, being a copy of license issued by the United States

682 *Additional Evidence of Plaintiff.*

Treasury Department, No. NY 338836-SU, dated January 14, 1942, issued to William R. White as Superintendent of Banks of the State of New York in connection with his liquidation of the assets in New York of, among other banks, Yokohama Specie Bank, Ltd.

(Received in evidence as Plaintiff's Exhibit 15.)

683 Mr. Connelly: Plaintiff also offers in evidence document produced by counsel for the defendant, being a photostatic copy of letter dated September 28, 1942, from Leo T. Crowley, Alien Property Custodian, to the Superintendent of Banks of the State of New York, with reference to liquidation of Yokohama Specie Bank, Ltd.

Mr. Bayles: No objection.

(Received in evidence as Plaintiff's Exhibit 16.)

684 Mr. Connelly: Lastly, I offer in evidence another document produced by counsel for the defendant, stated to be the most recent communication from the Federal authorities with reference to the liquidation of the New York Agency of Yokohama Specie Bank, Ltd., under which the Superintendent of Banks is now acting—being a letter dated October 29, 1942, from the Federal Reserve Bank of New York, addressed to Yokohama Specie Bank, Limited, New York Agency—Superintendent of Banks of the State of New York.

Mr. Bayles: No objection.

(Received in evidence as Plaintiff's Exhibit 17.)

Mr. Connelly: The plaintiff rests.

Mr. Bayles: If your Honor please, at this time I move to dismiss the complaint upon the ground that plaintiff has completely failed to prove a prima facie cause of action against the Superintendent of Banks as Liquidator of the assets and property in New York of Yokohama Specie Bank, Ltd.

As to the argument, your Honor, I believe 686
that plaintiff has failed to prove, although I admit the proof has been difficult to obtain —but he has failed to prove that on August 29, 1941, he became, or Standard became a creditor of Yokohama Specie Bank, Ltd., and remained such a creditor until the time the bank was taken over on December 8, 1941.

The Court of Appeals has indicated that apart from this conversation and letter written by the New York Agency, that the fundamental basis for plaintiff's right 687
to participate in the liquidation is that it has to prove, and prove conclusively, that it is a creditor of Yokohama Specie Bank, Ltd., in the sum of $557,561.25.

The only proof as to Yokohama Specie Bank's connection with this particular transaction, the Japanese transaction I am referring to now, your Honor, is a cable received on August 29, 1941, at the New York office of Yokohama, instructing them to pay a certain sum of money to Standard. That has been introduced in evidence.

688 *Motion to Dismiss.*

Apart from that, plaintiff has totally failed to show that Standard ever became a creditor of Yokohama Specie Bank, Ltd., by the proof that it has introduced. No proof has been offered as to the check, no proof has been offered as to the exact balance of account on August 29, 1941.

Your Honor has taken the records of the office produced here, as I recall, subject to final motion in some cases, I believe; but those records in no way can be said to be
689 an admission by Yokohama Specie Bank, Ltd., to this corporation of its obligation; and before the plaintiff can enter or attempt to prove a claim against this New York Agency, it first has to show conclusively that it is a creditor of this corporation. That is the first point. The proof, I admit, has been difficult to obtain, but it is insufficient to justify this particular claimant sharing as a creditor.

I haven't discussed as yet, except in my opening statement to your Honor that
690 under the New York Banking Law there is a further requirement, before a person who is actually a creditor of this Yokohama Specie Bank can actually participate in a liquidation. That further proof is that this particular claim under which he is a creditor of the Yokohama Specie Bank, Ltd., must arise out of a transaction with the New York Agency. If there was some transaction with the New York Agency, but no proof of the fundamental debt of the corporation itself, the plaintiff's cause of action must fall.

691

In connection with that transaction of August 29, 1941, before I drop the Japanese transaction, or claimed transaction, I believe and submit to your Honor that those records are inadmissible in so far as they are binding on the Yokohama Specie Bank, Ltd., as a general corporation which exists with branches all over the world. The only paper as a matter of fact which they produced of Yokohama Specie Bank, Ltd., as I recall, was a letter concerning a balance of a yen account on a certain date.

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As I recall the proof here, there isn't a scrap of any other evidence from the Yokohama Specie Bank. Ltd., in any way admitting obligation or receipt of a check, or the terms of the transmission.

Now, I have dwelt in my objections, your Honor, on these foreign exchange contracts and the government's license, because I believe that they are very important. Plaintiff claims that this alleged payment in August 1941 was pursuant to some pre-existing contract, and that contract was

693

cancelled, according to some cables received from Yokohama, by some Japanese regulation, and those contracts were re-instated. The exact terms of the contract—their provisions, limitations, durations—the witnesses weren't able to answer. The exact terms of the instructions or alleged instructions given to Yokohama Specie Bank on August 29, 1941 which the witness testified would accompany a check—also no proof was made as to what the instructions were, the duration of the instructions, and so forth.

694 *Motion to Dismiss.*

So therefore the plaintiff has not only failed to prove that Standard is a creditor by the passage of consideration to the Yokohama Specie Bank and acknowledgment by the Yokohama Specie Bank, but it has also failed to prove what the terms were of its contractual relations, if any, that it had with Yokohama Specie Bank abroad. As to this, the Superintendent of Banks has no knowledge.

695 As a matter of fact, although counsel hasn't requested it in this case, I have located an additional statement from Yokohama Specie Bank, Yokohama—an additional letter in connection with this cable, which will be offered in evidence, so I am making that statement to your Honor now and to Mr. Connelly—that letter is simply a confirmation of sending a cable which we received sometime in August 1941; in other words, confirming the sending of that August 29th, 1941 cable. But other than that cable received on August 29, 1941, by this

696 New York Agency, and other than a subsequent confirmation or letter of advice that they actually did send this particular cable, the New York Agency has no record at all in its possession as to any of these Japanese transactions.

All right, so much for this transaction which plaintiff claims Standard had with the Yokohama Specie Bank, Ltd. in Japan. That is not sufficient under the Court of Appeals decision. Plaintiff must show an enforceable legal obligation on the part of

the New York Agency to make payment of $557,000 odd. As to that independent transaction which plaintiff claims it had with New York Agency, I believe that the proof is totally defective to show (1) That the New York Agency has made a binding obligation or promised to pay Standard-New York $557,000 odd. The proof does not show that any sum was ever segregated or appropriated for payment for this particular draft of $557,000, as plaintiff argued throughout the Court of Appeals. 698

Plaintiff's witnesses as to conversations had with Messrs. Mulligan and Hapke have failed to prove that either Mr. Hapke or Mr. Mulligan—assuming that the statements which plaintiff claimed occurred—*that those statements were of any effect as* to impose an obligation upon the New York Agency.

What were these statements which plaintiff claims were had with the New York Agency? There were only two contacts—Hapke and Mulligan. What is Hapke supposed to have said to Midtbo on that day, August 29th—limiting it to August 28th and August 29th, in connection with this remittance? They acknowledge receipt that they received instructions to pay, instructions to pay; and that in accordance with statements by Midtbo that he was the one who wanted to prepare an application for a license, Hapke said, "It's all right, go ahead and do it," or some words to that effect. 699

700 *Motion to Dismiss.*

Then this particular letter, which is the only concrete proof in this case, was sent by the New York Agency, in effect confirming that conversation. Hapke dictated it, and it was sent, or it was signed by the Japanese agent who sent it to Standard Vacuum, attention of Mr. Midtbo. That is Hapke's conversation.

Mr. Kenney testified—and these are both witnesses that I have no quarrel with particularly—I mean, they impressed me, but
701 their statements themselves taken at face value—what do they show? They show that Mr. Kenney was preparing an application for a license—and these licenses are all permissive licenses, authority to enter into a certain transaction, if your Honor will read the particular license. He called up and spoke to a man by the name of Eugene Mulligan, who was employed by the New York Agency. Mulligan gave him general information as to the entries to be made on the records of the New York Agency—
702 mind, you, your Honor, if payment were made—"if" payment were made, so that Mr. Kenney could incorporate that general information in his application for a license. There is no dispute about that, that that general information was given by Mulligan. But what effect has that information which Mulligan did give Kenney? Just that if the transaction were paid, if this particular cable were paid, these entries would be made upon the records of the New York Agency: (1) That the Yokohama account

with the New York Agency would be debited; (2) That the cash account which it had with Guaranty Trust Company would be credited. That is the type of conversation that was had here.

This is a slight departure—slight departure—from the argument which plaintiff made in the Court of Appeals, and which appear in the statements in the record. The argument which plaintiff urged in the Court of Appeals was this: That Mr. Hapke, who was stated to be cashier of the 704
New York Agency in this oral conversation with Mr. Midtbo is supposed to have stated (1) that the New York Agency received instructions to pay—and this is the important thing—(2) that the New York Agency had available the sum of $557,000 odd for payment to Standard—had available a sum in that amount for payment to Standard.

In connection with Mr. Mulligan's testimony, there is also a slight variance between Kenney's statement upon the stand and the statement appearing in his affida- 705
vit. Upon the stand he testified that Mulligan did give him general information as to what entries would be made upon the books of New York Agency if payment were made. That is the type of information which he claims he obtained from Mulligan on August 29th. In his affidavit, as I recall, which was submitted to the Court of Appeals, this is what Mr. Kenney stated, and upon which the Court of Appeals acted in making its decision in this case:

"Deponent was informed" — this is important because they stressed this very thoroughly in their brief, this is a conversation they had with Mulligan—Kenney says, "Deponent was informed that said payment would be made"—"would be made out of the funds that the said Agency had on deposit with the Guaranty Trust Company of New York, 140 Broadway, New York City. Deponent was also informed that the Agency would debit, (in respect of the
707 $557,561.25) the account maintained on the books of the Agency in the name of Yokohama Specie, and that the Guaranty Trust Company would make the payment to claimant of said amount, and debit on its books the blocked account maintained on said Guaranty's books in the name of Agency."

That was the statement that was made in Kenney's affidavit that was submitted to the Court of Appeals. There is a slight variance in the testimony, but it is a very important variance, because there is a com-
708 plete difference between the statement which Kenney made in that affidavit as to a promise that this payment would be made out of the Guaranty Trust Company, and that the New York Agency would debit and credit certain accounts—and the statement which Mr. Kenney made on the stand that Mr. Mulligan advised him that when payment was made these particular accounts would be debited, and these particular accounts would be credited. I don't believe that plaintiff has shown any authority in

either Hapke or Mulligan binding the New York Agency to an obligation for some $557,000 odd. They failed to show the slightest bit of evidence as to any authority.

That leaves then only the last thing to consider, so far as this is concerned, and that is proof of that particular letter. That is all we have left on this alleged transaction by the New York Agency, upon which plaintiff seeks to predicate an enforceable claim —all that is left is that letter of August 29, 1941, written by Mr. Araki, per proc agent 710
to the Standard Vacuum. That letter, counsel for the plaintiff in his brief in the Appellate Division, conceded was not promissory. If your Honor will read that letter, that letter simply states a confirmation of receipt of instructions to pay, and a confirmation that Standard was the one who was going to apply for the permissive license. I don't believe that plaintiff can predicate any claim or binding obligation against the New York Agency, either upon the letter or the oral conversations. 711

I respectfully submit, your Honor, in view of the fact of this insufficiency and defect in proof, the plaintiff has totally failed to prove even a prima facie cause of action, and that the Superintendent's motion to dismiss should be granted.

The Court: I reserve decision, with an exception to you.

712 *Gustav L. Hapke, for Defendant—Direct.*

GUSTAV L. HAPKE, residing at 7820-83rd Street, Glendale, Long Island, New York, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Bayles:

Q. Mr. Hapke, for how many years were you employed by the New York Agency of the Yokohama Specie Bank, Ltd.? A. Not quite 24 years.

Q. And were you employed by the New York
713 Agency of—for convenience I will refer to Yokohama Specie Bank, Ltd., in the future as Y. S. B.—were you employed by the New York Agency of Y. S. B. right until December 8, 1941? A. That's correct.

Q. Now, for some time prior to the suspension of the New York Agency by the Superintendent of Banks on December 8, 1941, were you employed in the cashier's department? A. Yes, I was.

Q. About approximately how long? A. Oh, approximately ten years.

Q. There were other employees in the cashier's
714 department? A. Oh, yes. There were several.

Q. In 1941, will you let his Honor know, please, the names of other employees in the cashier's department? A. Well, we had a Japanese who was the per proc. agent, Mr. Araki, and there was a Mr. Strong and Burns, a Miss Carmody, Miss Nagelsmith; and we also had a little Japanese girl with us by the name of Miss Kato.

Q. Mr. Araki you said was the per proc. agent in charge of that department? A. That's right.

Q. Now, physically, was the cashier's department enclosed with a cage, or an enclosure? A. That's true. They had an iron cage around it.

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Q. And the Agency had offices at 120 Broadway, the Agency of Y. S. B.? A. That is right.

Q. It occupied more than one floor? A. No.

Q. One floor, or part of a floor? A. Part of a floor.

Q. Now, these different people that you mentioned who were employed in the cashier's department, did they have desks in this enclosure? A. Yes. They all had desks.

Q. Was there a sign outside of this cage, called "cashier's department"? A. Yes, over on the window on the outside.

716

Q. The cashier's department? A. Cashier.

Q. Now, Mr. Araki spoke English? A. Yes, very well.

Q. Very well. And if a person called up and wanted to speak to the person in charge of the cashier's department, in the usual course of events, to whom would that be referred? A. Mr. Araki.

Q. And he would take these calls? A. Right.

Q. Mr. Araki worked there daily, the same as any other Japanese agents and per procs.? A. That is true.

717

Q. I mean at this particular agency. Now, this cashier's department had a lot of work to do, on the question of signing letters, checks or things of that nature, in connection with the work of New York Agency, is that correct? A. That is true.

Q. Now, who in the cashier's department signed all letters on behalf of the New York Agency of Y. S. B.? A. Mr. Araki, or one of the other agents.

Q. Agents? A. Agents.

Q. And when you refer to other agents, are you referring to Japanese agents? A. We had Japanese agents.

718 *Gustav L. Hapke, for Defendant—Direct.*

Q. Now, the general set-up of this New York Agency was, and correct me if I am wrong, that Mr. Nishi was the agent in charge? A. That is true.

Q. And that there were two sub-agents? A. I believe that is true; I believe there were two.

Q. And then there were a number of what they call per proc. agents, or agents "per procuration," is that the exact name? A. That is true.

Q. Do you happen to recall now the number of these per proc. agents in 1941? A. I don't remem-
719 ber. They varied from time to time.

Q. Now, was Mr. Araki the only one associated with the cashier's department who signed any checks of the New York Agency? A. At what time are you referring to?

Q. 1941. I mean, was he the only one in the cashier's department who signed any checks? A. At the time of the freeze, yes. But prior to that, during the year 1941, I can't remember.

Q. But it was one of the Japanese agents? A. Right.

Q. Whether Mr. Araki or one of the other
720 agents, or per proc. agents? A. Right.

Q. That is what I was driving at. Did anyone other than Mr. Araki in the cashier's department have authority to sign anything, letters, checks, agreements, or anything of that type, except Mr. Araki?

Mr. Connelly: I am going to have to object to that until it first appears what this witness's knowledge is of the authority of the other people.

The Court: If you know, you may answer.

721

A. I didn't just quite get the question.

Q. I will probably make it a little clearer. Did anyone besides Mr. Araki have any authority to sign checks? A. You mean in the bank?

Q. No; in the cashier's department? A. He was the only one in the cashier's department who had any authority to sign.

Q. Any authority whatsoever to sign? A. Right.

Q. And you know that? A. I know that.

Q. Did you personally have any authority to sign checks? A. I never had any authority.

722

Q. Did you ever sign a letter—it is a pretty broad statement, but I am asking you—in the whole time you were connected with the New York Agency, did you ever sign a letter of Yokohama Specie Bank, Ltd., New York Agency? A. I don't ever remember signing anything.

Q. Any letter? A. No.

Q. Now, were you an officer or an agent, subagent, or per proc. agent, of the New York Agency? A. No.

Q. There is the expression "Senior American clerk." Were you the Senior American clerk in the cashier's department? A. That it true, yes.

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Q. Were you known to the outside by that name?

Mr. Connelly: I will have to object to that, if the Court please. I don't see how this witness could testify to how he was known on the outside. He says he was or was the senior American clerk.

The Court: Sustain the objection.

Mr. Bayles: Exception.

Q. As senior American clerk, did you relay instructions that Mr. Araki gave you to the other

American employees in the cashier department? A. Yes, at times.

Q. He relayed instructions directly at times? A. At times he gave them directly, and at times he passed them on to me.

Q. I see. Subsequent to December 8, 1941, were you employed by the Superintendent of Banks to assist in the liquidation of the various agencies? A. Yes, I went with the Superintendent of Banks after the——

Q. Taking over? A. After the State Banking Department took over the liquidation.

Q. Approximately for how long were you employed with the Superintendent of Banks? A. I believe I went with them in March of 1942, and I left there in December 1943.

Q. At the present time you no longer have any association with the Superintendent of Banks in connection with the liquidation? A. None whatsoever.

Q. Are you familiar with the practice prior to the freeze on July 26th, in connection with the telegraphic transfers or in connection with cables involving telegraphic transfers received by the New York Agency? A. Yes. I handled them.

Q. What I would like to do with you, Mr. Hapke, is to trace through a typical telegraphic transfer, payment of which was made by the New York Agency to Standard Vacuum Oil Company before the freeze. The one I am going to refer to is the one of July 1, 1941. I show you this copy of telegram referred to, dated July 1, 1941, and ask you whether or not that is a copy of a cable which was received by the cashier's department from the cable department of the Yokohama Specie Bank, New York Agency? A. Yes, that was one.

Mr. Bayles: I offer this in evidence, if your Honor please.

Mr. Connelly: Objected to as immaterial. I might state, if the Court please, there is no issue here as to the payment of that cable if it was paid.

The Court: What is your object? To show the usual course of business?

Mr. Bayles: Events prior to the freeze.

The Court: Overruled.

(Received in evidence as Defendant's Exhibit N.) 728

Q. Although you may not personally know it, Mr. Hapke, prior to the freeze, these T. T.'s came in in code, did they not? A. That I don't know. I don't know how they came in; I didn't see them.

Q. You didn't see the code copy? A. No.

Q. In any event, the copy which was handed to the cashier's department which has been marked in evidence as Defendant's Exhibit N—when this copy is received by the cashier's department, it would be handed to Mr. Araki? A. That's right.

Q. The Japanese agent in charge? A. That's true. 729

Q. And he would look it over; and what did he do with that cable? A. Usually gave it to me.

Q. Then in the ordinary course, would entries be made upon the register of bills and T. T. payable, Plaintiff's Exhibit 12? I am referring to the entry under July 1, 1941? A. That is true. The entry would be made in the register.

Q. That register was kept in the cashier's department? A. That is right.

Q. That particular number in crayon, No. 1 appearing on Defendant's Exhibit N—was that

written in the cashier's department? A. That was written by us.

Q. And does that No. 1 refer to— A. No. 1 in the book.

Q. —No. T. T. 1 appearing opposite July 1, 1941? A. That is true.

Q. Do you refer to that as the Agency's T. T. number? A. That is our number.

Q. Then would this particular voucher be made up in the cashier's department on July 1, 1941? A. That is true; that would be made.

731 Mr. Bayles: I offer that in evidence.

Mr. Connelly: May I ask, is this for the same purpose of establishing the regular course of business?

Mr. Bayles: Yes.

Mr. Connelly: No objection.

(Received in evidence as Defendant's Exhibit O.)

Q. Then would these receipts and a letter of advice be also made up in the cashier's department (showing papers to witness)? A. That is

732 true.

Mr. Bayles: I offer these three sheets in evidence as one exhibit.

(Received in evidence as Defendant's Exhibit P.)

Q. Would this check also be made up at the same time (showing paper to witness)? A. Yes.

Mr. Bayles: I also offer that in evidence.

Mr. Connelly: No objection.

(Received in evidence as Defendant's Exhibit Q.)

Q. Then, Mr. Hapke would the check, Defendant's Exhibit Q, Defendant's Exhibit P, and the cable, Defendant's Exhibit N, and the transfer voucher, Defendant's Exhibit O, be submitted to the Japanese agent? A. That's true.

Q. Mr. Araki? A. That's true.

Q. Would Mr. Araki indicate his approval upon the transfer voucher? A. He would by putting his stamp on it.

Q. His stamp is on that voucher? A. Is on that voucher.

Q. Would Mr. Araki sign the check? He would. 734

Q. And is that his signature appearing on Defendant's Exhibit Q? A. That seems to be his signature.

Q. As p. p. agent? A. As p. p. agent.

Q. Did Mr. Araki sign the original of this letter, which is dated July 1, 1941, to Standard Vacuum Oil Company, marked in evidence as Defendant's Exhibit P? A. Right.

Q. And then would the check and the receipts and the letter of advice be sent out, or be handed over to a messenger? A. That's true.

Q. For delivery to Standard Vacuum? A. 735 That's true.

Q. Then would the New York Agency receive back receipts signed by representatives of Standard Vacuum Oil Company in duplicate? A. That's true.

Q. Now, these particular accounts which were debited and credited for this transaction, and I refer you to Defendant's Exhibit O—I ask you in connection with this payment to Standard Vacuum on July 1, 1941, would the Yokohama account of Y. S. B. with the New York Agency, called "Inter Office A/C," their account, be debited with this amount of this particular payment? A. Yes.

736 *Gustav L. Hapke, for Defendant—Direct.*

Q. And would the corresponding account with bankers, called "Current account with Bankers," be credited for the corresponding amount? A. That's true.

Q. Upon this particular transfer voucher appears Guaranty Trust Company 21897. Does that refer to— A. Check number.

Q. Check number which has been marked in evidence as Defendant's Exhibit Q? A. That's true.

Q. Do you recall speaking to Mr. Midtbo of Standard Vacuum in connection with remittances
737 or payments by the New York Agency under these telegraphic remittances? A. Yes, from time to time.

Q. What would be the substance of your talk or conversation with him in connection with one of these telegraphic remittances, or telegraphic instructions? A. What is this, prior to the freeze.

Q. Yes.

Mr. Connelly: Excuse me. I have no objection to counsel's asking for what the conversations were. I am a little troubled
738 by the question, "What would they be."

Mr. Bayles: Oh, I see. You are quite right. I will rephrase the question:

Q. What were the types, or what was the substance of the conversation that you had with Mr. Midtbo upon receipt of cable instructions such as July 1, 1941? A. Well, perhaps I called Mr. Midtbo and told him that I had instructions to pay him this money. Or perhaps he called me and asked me if I had it. It could be either way.

Q. Either way. Was that telephone call made by you in the cashier's department, or did other people in the cashier's department make those

calls? A. Right. Other people made the e calls as well as myself.

Q. Miss Nagelsmith, Mr. Strong and other employees? A. Right.

Q. Well, at times was a check prepared and sent over to Standard-New York without any telephone call being made by anyone? A. That I can't say. I don't remember.

Q. You don't remember. Would the New York Agency, apart from the receipt of those cabled instructions under date of July 1, 1941, know about the basis of the transaction in Japan? 740

Mr. Connelly: I will have to object to the question. It goes beyond the witness's own knowledge.

The Court: Sustained.

Mr. Bayles: You are right.

Q. Did you know? A. I didn't know.

Q. Whenever you made a telephone conversation, whenever you personally made a telephone conversation, did you make any entry or memorandum to that effect, prior to the freeze? A. No. I don't ever remember making any entries, any notations. 741

Q. Anywhere? A. No.

Q. Either on the original cable held by the cashier's department, Defendant's Exhibit N— A. No, I don't remember making any notations.

Q. Now, when the receipt which was signed by Standard arrived at the Agency, was the cable, Defendant's Exhibit N, marked "Receipt arrived?" A. That's true.

Q. And that "Receipt arrived" refers to the receipt from Standard Vacuum? A. Standard Vacuum.

742 *Gustav L. Hapke, for Defendant—Direct.*

Q. And was that entry, "Receipt arrived," also marked in the register of bills and T. T. payable? A. Yes.

Q. Now, was this the normal procedure that was followed by the New York Agency in making payment to Standard Vacuum Oil Company, New York, upon receipt of cable instructions from one of New York Agency's foreign offices, the normal course? A. This was the normal course before the freeze.

743 Q. Before the freeze, that's right. Now, from time to time—and this question refers to T. T. or cable instructions in general—from time to time as the New York Agency would receive any cable instructions, did the New York Agency ever receive a notice from the remitting bank to cancel the instructions? A. Yes. There have been such instructions.

Q. And upon receipt of those instructions of cancellation, the agents would comply, or those in the cashier's department would comply with——

Mr. Bayles: I will reframe the question, Mr. Connelly——

744 Mr. Connelly: I wish you would try to be not quite so leading. I would like to get the witness's testimony rather than counsel's.

Q. Upon receipt of such cancellation, Mr. Hapke, what did the cashier's department do?

Mr. Connelly: I am going to have to object to this too, unless it is made to appear just what is being cancelled and the system. I believe the witness has testified this is not part of the regular course of busi-

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ness; an exceptional situation. I don't think we should get testimony in this form.

The Court: Well, he may testify in the event of the receipt of the cancellation of a cable transfer, what they did.

Mr. Bayles: Cable instructions.

The Court: Cable instructions.

A. Well, of course if we received the instructions to cancel a cable, and payment hadn't been effected, we followed the instructions of the office from whom we received the wire.

746

Q. Now, just to get the record complete on this particular July 1st cable, some time after July 1st, or some time after usually the receipt of the cable, did the New York Agency receive this advice of T. T. sold from the Yokohama office? A. That is true. We usually always received a mail confirmation of all our wires.

Mr. Bayles: I offer that in evidence.

Mr. Connelly: Is it for the same limited purpose?

Mr. Bayles: The same purpose as showing this particular transaction, carrying it down through all the steps.

747

Mr. Connelly: When you say "showing this particular transaction," I take it you mean showing what the witness has dedescribed as a typical transaction.

Mr. Bayles: Of July 1, 1941.

Mr. Connelly: Yes.

(Received in evidence as Defendant's Exhibit R.)

Q. And upon receipt of Defendant's Exhibit R, did the cashier's department check the payment

748 *Gustav L. Hapke, for Defendant—Direct.*

and then file this letter of advice away? A. That's true.

Q. When the New York Agency actually made payment to Standard, did they confirm the fact of that payment to the remitting office, Yokohama office in this case? A. Yes. We would confirm it in writing. We would send them advice that the payment had been effected, and also send them a duplicate of the receipt signed by Standard.

Q. That is the usual procedure? A. That is the usual procedure.

749 Q. And that particular number on Plaintiff's Exhibit 12 in pencil, this one right here (indicating)—this particular notation in Defendant's Exhibit No. 12 under the "Remarks" column, under date of August 5, 1941—does that indicate that that confirmation of payment on July 1, was sent on that date? A. That is right.

Q. Can you indicate to the Court when this letter of advice was received by the New York Agency, defendant's Exhibit R? A. As far as I can see, the only thing on here is August 6, 1941.

Q. And that refers to the July 1, 1941, cable
750 instructions? A. Right.

Q. Now, in so far as these transactions, the typical transaction of a payment under a telegraphic instruction is concerned, was it simply a cash transaction?

Mr. Connelly: I object to that, if the Court please. Now the question itself is a conclusion of law. He has testified as to what he understands the facts would be. Now, counsel can make whatever argument he wants.

A. They never paid over the cash.

Mr. Bayles: I don't mean that.

The Court: Reframe the question.

Mr. Bayles: I will.

Q. Upon receipt of instructions, the New York Agency would issue a check and credit the cash account and debit the remitting branch account. Would there be any establishing of a credit in favor of anyone as a result of these remittances? A. No. The only thing is, we issued a check.

Q. That is the only type of transaction? A. That is right. 752

Q. And upon the issuance of a check, the account which the New York Agency had, current account with bankers, was credited? A. Right.

Q. Now, coming down to the Japanese freeze, do you remember the date that occurred, Mr. Hapke? When I refer to the Japanese freeze, I am referring to the United States freeze of Japanese assets located in this country. A. It was either around July 25th or 26th. Offhand I don't remember. I know it was a Saturday morning.

Q. You have got a pretty good recollection. I 753 am not asking the particular date, but your recollection of the events. A. It was either the 25th or the 26th.

Q. Well, you have got a recollection of the events happening at the New York Agency of Yokohama Specie Bank on that date? A. Yes, I have.

Q. What time did you arrive at the Agency on that morning? A. About 10:30.

Q. Whom did you find there?

Mr. Connelly: I am going to object, if the Court please; immaterial to any issue in this case.

754 *Gustav L. Hapke, for Defendant—Direct.*

The Court: I don't think this is material to these matters.

Mr. Bayles: If your Honor please, you may wish argument on this at this time, because I plan to establish through witnesses that for the complete freeze—from the beginning of the Japanese freeze on July 26, 1941, until the closing of this particular agency on December 8, 1941, there was a Federal supervisor in charge of this particular agency, put there under instruc-
755 tions from the Treasury Department. He was there every day with his assistants. I plan to show what occurred as a result of his presence; what instructions he issued; what change of normal procedure followed, and all of those phases which occurred as the result of the freeze.

The Court: I overrule the objection with an exception.

Q. Did you find Mr. Ashwood on the premises when you arrived there? A. I did.

756 Q. Was he the supervisor? A. He was the Federal Bank Examiner in charge.

Q. Was he there with his assistants? A. Yes.

Q. Do you recall whether you personally received any instructions on that day as to what you should do?

Mr. Connelly: I am going to object.

Mr. Bayles: I will rephrase the question:

Q. Do you recall any instructions you received on that date, special instructions, as the result of the freeze and the presence of Mr. Ashwood?

Mr. Connelly: Just yes or no, please.

A. Yes.

Q. What were those instructions, Mr. Hapke?

Mr. Connelly: I am going to have to object to conversations taking place, not in the presence of this plaintiff. I have no objection to having this witness testify to any regular course or practice followed at any given time, that may be thought to be material. But I don't think we should get into conversations that these people had with others.

The Court: From whom were these instructions received? 758

The Witness: I received them from Mr. Araki, who was per proc. agent.

The Court: I overrule the objection.

Q. What were these instructions you received, Mr. Hapke, in general, as far as you can recall? A. Well, the instructions we received were that Mr. Ashwood was in charge.

Q. Of the Agency? A. Of the Agency.

Q. Did you receive any instructions about any entries in the books of the bank? A. At the time we were told not to make any entries. 759

Q. Did you receive any instructions in connection with transfer vouchers similar to Defendant's Exhibit O? If you can recall. A. I don't remember about transfer vouchers.

Q. But did Mr. Ashwood or his assistants go over and take charge of each one of these particular departments of the bank?

Mr. Connelly: I am going to object again. All these questions are leading.

760 *Gustav L. Hapke, for Defendant—Direct.*

By the Court:

Q. What did he do in the bank that day? A. Mr. Ashwood?

Q. Yes. A. Why, he more or less closed down the whole place, the Agency, as far as I remember.

By Mr. Bayles (Continuing):

Q. Did he take over the cashier's department, or did one of his assistants, of Mr. Ashwood, examine the cash, and close up the box and things
761 like that? A. If I remember right, yes. I believe they did.

Q. They deprived the Japanese agents and former employees of access to any of the specie or cash they had? A. I don't know.

Mr. Connelly: I object. Same objection as leading and a conclusion.

The Court: Well, it is leading. Counsel, I understand you wish to observe your Holy day tomorrow. Is that true, sir?

Mr. Bayles: Yes, sir.

762 The Court: Friday morning is the Red Mass of the Court, so we will take a recess in this case until noon on Friday. 12:00 o'clock Friday.

(A recess was taken until 12:00 noon, September 27, 1946.)

New York, Friday, September 27, 1946.

(Trial Resumed Pursuant to Adjournment.)

Gustav L. Hapke, resumed the stand.

Direct examination by Mr. Bayles (continuing):

Q. Mr. Hapke, there are a few items on the register of bills and T. T. payable, which I don't believe we had explained to the Court the last time 764
you were here. The first column on the left side of that ledger is headed by date, referring to Plaintiff's Exhibit 12. Will you explain to the Court what date that refers to? A. I believe that means the date the cable was received.

Q. By the New York Agency? A. That is right.

Q. In general were these cable instructions received by New York Agency from its branches abroad executed by payment by New York Agency to Standard on the same date of receipt of the cable? A. Yes. Usually, unless for some reason —mutilation of the instructions, or something. 765

Q. When you say "mutilation of instructions," you mean some vagueness about the particular cable instructions received? A. That is true.

Q. Mr. Hapke, were you ever the cashier of the New York Agency of the Yokohama Specie Bank, Ltd.? A. No, I was never cashier.

Q. Did you ever state to anyone that you were such cashier? A. To the best of my knowledge, I don't remember.

Q. Did you ever state to anyone that you were cashier of New York Agency? A. I don't remember ever stating it, no, but——

766 *Gustav L. Hapke, for Defendant—Direct.*

Q. Do you have any authority to enter into any contract or agreement on behalf of the New York Agency?

Mr. Connelly: I object to that as calling for a conclusion; too broad.

The Court: Sustained.

Q. Were you given any authority to enter into any contract or agreement on behalf of the New York Agency?

767

Mr. Connelly: Same objection.

The Court: He may answer that.

A. I was never given any authority.

Q. At the last time this Court was sitting, you stated you were senior American clerk in the cashier's department. Can you explain to his Honor in your own words exactly what you meant by that?

Mr. Connelly: I object to the form of that question.

768 The Court: If you can expand that by saying what it means.

Mr. Connelly: If the Court please, my objection—I don't mean to argue it—but my objection went to the fact that the question called for a conclusion as to the meaning of the term. I have no objection and would have no objection to the witness stating he was the senior American clerk. I have no objection to having him state what his duties were. But I don't think it is proper to have the conclusion expressed.

By the Court:

Q. What were your duties as senior American clerk? A. Well, my duties as senior American clerk, I took instructions from the cashier, who was Mr. Araki, at the time, and more or less any instructions that he had for the other Americans he had in the department were given through me.

By Mr. Bayles (continuing):

Q. In dealing with the outside public, were you given any authority which the other employees in 770 the cashier's department did not have?

Mr. Connelly: I object to the form of that question.

The Court: Sustained.

Q. Did you ever, so far as you can recall, receive any letter from an outsider addressed to you as senior American clerk? A. Not to my knowledge.

Q. I am not certain whether I asked you these questions last time, but did you ever sign any letter on behalf of the New York Agency of Yokohama Specie Bank? A. No, I never did. 771

Q. Now, you stated that Mr. Araki was the per proc. agent in charge of the cashier's department? A. That is true.

Q. Well, for the record, could you state to the Court what "per pro" actually means? A. Well, from what I interpret the meaning of it——

Mr. Connelly: Excuse me. I had understood the question to call merely for the translation of the term; not a definition of it.

The Court: Yes.

By the Court:

Q. What is the word, what is the full word? A. Well, do you want my interpretation of the word "per proc."?

Q. If it is a general interpretation. It can't be exclusively yours. A. No. But to the best of my knowledge, as to what——

Q. What is your best knowledge? A. From what I understand, Mr. Araki was signing for Mr. Nishi or one of the agents, and not for the bank.

773 By Mr. Bayles (Continuing):

Q. What are the full words, "per pro."? Is that an abbreviation, or do you know what the full words are? A. Truthfully speaking, I don't know the full words.

Q. Well, Mr. Araki was away on vacation at times, is that correct? A. That is true.

Q. With whom generally were the matters pertaining to the cashier's department directed during his absence? With what agent in the Yokohama Specie Bank, Ltd., New York Agency? A.
774 Usually when Mr. Araki or one of the other agents, whoever was in charge of the cashier, went on vacation, he was replaced by another one of the per pro agents.

Q. Now, coming down to the freeze on July 26, 1941, I believe you testified that on that day Mr. Ashwood, the Federal Bank Examiner, and his assistants, took charge of the New York Agency? A. That's true.

Q. For how long did Mr. Ashwood remain in charge of the New York Agency? A. Until December 8th.

Q. 1941. A. 1941.

Q. And were Mr. Ashwood and his assistants on the premises of the New York Agency every business day? A. Yes.

Q. And did they supervise all transactions of the New York Agency?

Mr. Connelly: I will object to that, if the Court please, as calling for facts not necessarily within this witness's knowledge, and also calling for a conclusion of law as to what their supervisory powers were.

The Court: Sustain the objection. He 776
may testify as to what they did generally each day.

Q. I adopt his Honor's suggestion. Will you answer the question his Honor has put to you, please? A. Well, all transactions that are handled through the bank, were handled generally in the cashier's department; in making any payments of any kind, had to be made with the consent of Mr. Ashwood.

Q. Well, during the freeze, did you sign any checks on behalf of the New York Agency? A. No.

Q. Well, was the same authority that you had 777
before in the New York Agency, whatever it was, subject to Mr. Ashwood's approval and regulations, freezing regulations—did that same authority continue? Were you given any additional authority is the question. A. No. I wasn't given any additional authority.

Q. During the freeze. Was the cashier's department permitted to make routine telephone calls during the freeze? A. Yes.

Q. Was the cashier's department also permitted to send out routine letters during the freeze?

778 *Gustav L. Hapke, for Defendant—Direct.*

Mr. Connelly: I am going to object to the form of the question. This "routine" implies some conclusion.

The Court: Yes. It is a question of what is the "routine."

Mr. Bayles: You are quite right, your Honor. I will see if I can rephrase that.

Q. Was the cashier's department permitted to send out customary letters advising remittees of receipt of instructions to pay?

779

Mr. Connelly: Same objection, if the Court please; the characterization of letters I don't think is proper.

The Court: Customary. Same ruling.

Q. Well, was the cashier's department permitted to send out, without prior submission to Mr. Ashwood, letters to remittees confirming receipt by the New York Agency of instructions to pay? A. Well, as far as my recollection goes back, it was never questioned that we send out letters regarding remittances we received.

780

Q. Without prior submission to Mr. Ashwood? A. Right.

Q. Now, was there a change in the proceedure in the New York Agency in connection with the receipt of telegraphic instructions after the freeze? A. Surely, there was a change.

Q. Now, upon receipt by the cashier's department of a copy of cable instructions, was any entry made in the register of bills and T.T. payable, marked in evidence as Plaintiff's Exhibit 12, upon receipt of the cable? A. This is after the freeze?

Q. Yes. A. After the freeze, my interpretation was that when Mr. Ashwood came in, that we were not—

Mr. Connelly: No. I am going to ask that he be directed to say just what was done.

The Court: Yes.

Q. Just what was done, please. A. Yes. We had instructions from Mr. Ashwood not to make any entries in any books without his permission.

Q. At times, on behalf of the remittees, would the Agency prepare an application for a Treasury Department license? A. Yes, at times.

Q. And on behalf of the cashier's department, who signed those applications? A. Mr. Araki. 782

Q. And to whom were these applications, after they were signed by Mr. Araki, submitted. A. Usually submitted to Mr. Mulligan.

Q. And from him? A. To Mr. Ashwood.

Q. And do you know what the next stage of the matter was? Do you know to whom Mr. Ashwood forwarded those applications for licenses? A. That I don't remember, whether they came back to me or went back to Mr. Mulligan.

Q. All right. From time to time, certain of these applications which were submitted by the Agency, were approved by the Treasury Department, is 783 that correct? A. That is true.

Q. And a license was forwarded to the New York Agency? A. That's right.

Q. Now, can you explain to his Honor what procedure the cashier's department followed upon receipt of a license approving a certain application filed?

Mr. Connelly: I make the additional objection on the ground of immateriality, if the Court please. There is no issue concerning any license received in respect to this

784 *Gustav L. Hapke, for Defendant—Direct.*

transaction, and the procedure that would have been followed by the New York Ageney upon receipt of such license is of no concern here.

Mr. Bayles: Does your Honor wish the purpose of the questions? I am going to try to develop, your Honor, the procedure that was followed during the freeze, where a license was obtained, payment made, and the manner of payment; requirement of submission to Mr. Ashwood before any
785 payment was made, even though a license was obtained. I am going to try to establish that these entries were only made on this register when payment was actually made. I am going also to establish, if I can, through this witness, the procedure that was followed by the Agency in the event licenses were denied.

The Court: I will take it subject to a motion to strike on the ground of immateriality.

786 Q. (Last question repeated by the stenographer.) A. Well, upon receipt of such a license, the matter was taken up with Mr. Ashwood before any entries could be made in our books, or payment could be effected.

Mr. Connelly: I move to strike out that portion of the witness's answer with reference to what could be done, as involving a conclusion of law as to the effect of the freezing regulations. I have no objection to the witness stating what was done.

The Court: Strike that part of the answer out.

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Q. Just answer what was done, Mr. Hapke, please. A. Well, do you want me to answer the whole question over again?

Q. Yes, please, having your answer state what was done, instead of what would have been done or could have been done. A. Yes. Upon receipt of a license to make a payment we would give the—

Q. No, the point is the same objection that Mr. Connelly urged before, you used the word "would;" if you would.

788

The Court: What you did do.

A. We submitted—is that better? Or we gave the application to Mr. Ashwood, and upon his approval, book entries were made and payment was effected.

Q. The entries were made in this register, in the books as of the date payment was effected? A. That's right.

Q. Now, at times did the remittee state that he wished to make the application, instead of the New York Agency? A. That's true.

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Q. Do you recall whether it was the general procedure of the New York Agency in the event the remittee desired to make the application for the license himself, that the New York Agency confirm that by letter? A. That I don't remember.

Q. Now, in the meantime, prior to the time the Treasury Department acted upon the application, where physically in the cashier's department did you keep these copies of cable instructions, and any correspondence pertaining thereto? A. As far as I can remember, they were all kept in a special folder with all the information attached to them.

790 *Gustav L. Hapke, for Defendant—Direct.*

Q. Do you know the name of that folder. A. It might have had some writing on it. I don't know offhand just what it was.

Q. What kind of folder was it? A. I imagine it was a regular letter-size Manila folder.

Q. I am trying to explain the type of file to his Honor. Where payment was made after a license had been granted, and Mr. Ashwood's approval obtained, where did you file that cable, and any correspondence pertaining to it? A. We had a special file.

791 Q. That was another file you are talking about? A. That is an entirely different file, containing only completed payments.

Q. Where a license was denied and the New York Agency received notice to that effect, what was the procedure you followed as to disposition of the cable, and any correspondence pertaining thereto? Where did you place it? A. Such files were usually kept in an open file, if I remember correctly.

Q. No. I am referring to where a license was denied. A. All the data and everything was filed
792 together and placed into a file.

Q. Is that the same file that you are referring to that you mentioned about these completed transactions? A. I believe they were kept in the same file.

Q. In connection with that particular cable, after a license was denied, what was the practice of the New York Agency? A. The practice of the New York Agency was to inform the office from whom they received the instructions, that the license had been denied.

Q. Now, during the period of the freeze, do you know whether or not Mr. Ashwood—that is the

838 *Cecil Ashwood, for Defendant—Direct.*

Q. And for how long did you remain at the Federal Reserve Bank? A. I can't say exactly. I should say about three or four hours.

Q. Who was your immediate superior, and what was his position? A. Gibbs Lyons, Chief National Bank Examiner.

Q. Did you receive any instructions from Mr. Lyons the night of July 25th or the morning of July 26th? A. On the morning of July 26th.

Q. Will you kindly explain to the Court what those instructions were in so far as they pertained
839 to the New York Agency of Yokohama Specie Bank, Ltd.?

Mr. Connelly: I have to object, if the Court please, as immaterial—what instructions this man was given by his superior. The effect of the Foreign Funds Control regulations on the operations of the Yokohama Specie Bank is a matter of law. Anything having to do with instructions given internally in the Banking Department may at most involve some individual's interpretation of the law. The law itself is
840 available, and I submit we should not go afield to get individual interpretations of it in the form of instructions.

The Court: I think we generally admit the instructions on the ground that is the practical interpretation of the statute under which he is acting.

Mr. Connelly: Of course, neither this witness nor the Federal Reserve Bank is a party to this lawsuit, where an inquiry has to do with instructions in an organization which is not a party to this suit, and with which this plaintiff is not connected.

Federal Supervisor—refused to approve payments to remittees although a license had been obtained?

Mr. Connelly: I will object to the question as immaterial.

The Court: Overruled.

A. Yes, I do remember offhand on several occasions, where the licenses had been issued, and Mr. Ashwood had denied payment.

Q. Now, I should like to come to August 29, 1941. Was this cable, dated August 29th, from 794
Yokohama branch of the Y. S. B. received by the New York Agency on the same date? A. It appears to have been.

Q. Is this the copy that was referred to the cashier's department (showing paper to witness)? A. It looks that way, because I have written on it, and it is in my own handwriting.

Mr. Bayles: I offer the copy of that cable in evidence.

Mr. Connelly: That is a copy of Plaintiff's Exhibit 11. No objection.

(Received in evidence as Defendant's 795
Exhibit S.)

Q. Mr. Hapke, are the pencil notations, "Mr. Midtbo," appearing on Defendant's Exhibit S, in your handwriting? A. That's true.

Q. Was that notation made on August 29, 1941? A. Offhand I would say yes.

Q. In connection with these cable instructions, did you have any telephone conversation with Mr. Midtbo on that date? A. Well, I must have had, because I wrote him a letter on that date.

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The Court: I will take it, subject to a motion to strike, and exception to you.

Q. You may answer. A. As I recall, I received only instructions to go over to the Yokohama Specie Bank and take charge.

Q. Were they oral or in writing? A. Oral.

Q. Approximately what time of the morning were those instructions given to you? A. Between 8:00 and 8:30, I think.

Q. And what did you do? A. I went over to the Yokohama Specie Bank and took charge of the bank.

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Q. Were you accompanied by any assistants? A. Yes, about 13 or 14 men.

Q. Well, did you reach the premises of Yokohama Specie Bank, New York Agency, before it opened for the business day? A. Yes.

Q. What did you do upon arrival there? A. My recollection is that the first thing I did was to have a talk with Mr. Nishi, the Director, with the second in command there also, and I believe Mr. Mulligan was there; three of them. And I told them that we had come in to take charge of the bank, and that they could do no business without a license and under our supervision, with our permission. And then I put some of my men in charge of some of the departments—cash, for instance. We took charge of that, and I believe that we put men in other departments like the import bills—I am a little hazy on those details.

843

Q. OK. Well, did you make any arrangements for guarding the premises after the close of business hours, and if so, what arrangements did you make? A. I think early in the game we had New York Police Department protection, and I think

796 *Gustav L. Hapke, for Defendant—Direct.*

Q. The letter you are referring to is Plaintiff's Exhibit 7 (showing paper to witness)? A. This letter I think was written by me too. I think this is the letter I have reference to. Yes, that is the letter.

Q. Do you know whose signature is on the bottom of this original letter, Plaintiff's Exhibit 7? A. Mr. Araki's signature.

Q. And did you dictate this letter? A. Yes, I did.

Q. And submitted it to Mr. Araki for signa-
797 ture? A. That's true.

Q. Does Plaintiff's Exhibit 7 contain the substance of the conversation you had with Mr. Midtbo on that date?

Mr. Connelly: Objected to.
The Court: Sustained.

Q. Do you recall, Mr. Hapke, the substance of the telephone conversation you had with Mr. Midtbo on August 29, 1941? Just the substance, not the words. A. Word for word, I don't know.

Q. No, not word for word; just substance. A.
798 Well, I informed him I had received instructions from Yokohama to pay him this amount of money.

Q. Yes. Anything else discussed as far as you can recall? A. As far as I can recall, I don't remember anything farther.

Q. In order possibly to refresh your recollection, can you refer to paragraph second of Plaintiff's Exhibit 7? A. That's quite possible. I wouldn't say that I didn't speak to him in respect to him applying for a license.

Q. OK. Prior to the time Plaintiff's Exhibit 7 was sent, was it submitted to Mr. Ashwood for approval? A. That I cannot say offhand. I don't

recollect whether it was given to Mr. Ashwood for his approval or not.

Q. Did you ever receive any written reply to that letter? A. As far as I can remember, I don't believe that there was one.

Q. Where did you keep Defendant's Exhibit S, and a copy of Plaintiff's Exhibit 7? Where in the cashier's department did you keep them? A. In with my other papers in the folder.

Q. Which folder are you referring to? A. The pending folder.

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Q. Just one further question, Mr. Hapke: And was this cable, a copy of Plaintiff's Exhibit 7, kept in the pending file to the close—up to the suspension of the Agency by the Superintendent of Banks? A. As far as I can remember, yes, it was in that folder.

Mr. Bayles: Your witness.

Cross examination by Mr. Connelly:

Q. As I understand it, Mr. Hapke, your immediate superior in the cashier's department was Mr. Araki? A. That's true.

801

Q. And he was known by the title of per proc. agent, is that right? A. He was known as the cashier.

Q. Well, was he known by two titles? A. Well, he was cashier, and he was also one per proc. agent.

Q. And so referred to in connection with any internal direction of the bank? A. That's true.

Q. Was there in the cashier's department any title of assistant cashier? A. No, sir.

Q. In the internal New York Agency of Yokohama Specie Bank, there wasn't any title given to assistant cashier, is that right? A. No, sir.

802 Q. Now, in connection with your own duties in 1941 prior to July 26, 1941, you have testified to the duties that you performed in connection with the receipt of cable instructions from your foreign branches. Am I correct in understanding that as a general matter you handled the various steps taken in connection with the receipt, recording and payment of those cable instructions?

Mr. Bayles: Pardon me. I object. I don't believe the witness testified he
803 handled the payment of those cable instructions.

Mr. Connelly: Let me be sure from the witness.

Q. You testified in response to Mr. Bayles' questions to the routine followed by you, which involved first the receipt of the copy of the cable; secondly, the entry in the register of T.T. and bills payable— A. That's right.

Q. Thirdly, the preparation of a transfer voucher indicating a proposed credit to the bank account, out of which you proposed to make pay-
804 ment, and a debit to the branch office account from which the cable instructions came? A. Yes.

Q. Then the preparing of a check, and the preparation of a forwarding or covering form of letter from the bank to the remittee and the form of receipt from the remittee. Now, did I understand correctly that you prepared all of those documents? A. Not necessarily. I didn't prepare them myself.

Q. Well, let us go over them one by one. So far as the entry register of T.T. and bills payable, did you customarily make that entry? A. I customarily made that entry.

Q. Then the next step being the preparation of what you described as a transfer voucher. Did you prepare that? A. I prepared that.

Q. Who made the selection at that point of the particular bank account, out of which the payment was proposed to be made? A. That was Mr. Araki's instructions to the clerk who handled the bank account. He gave her instructions as to what bank to use.

Q. The Agency maintained accounts at that time with a number of different banks in New York? A. With a number of different banks. 806

Q. You found out, either from Mr. Araki or one of the girls, what particular account was to be used in connection with that? A. I didn't find out. I didn't go into details on that.

Q. Well, all I am asking is with reference to the source of your information as to the banking accounts to be used. A. I didn't know what bank it was coming from. I made out the voucher.

Q. But how about this transfer which you mentioned? A. I made out the voucher.

Q. My question had to do with the transfer voucher, of which Defendant's Exhibit O was 807 offered as a typical illustration.—A. Right.

Q. And you will note on that is indicated the name of the bank out of which, from your account, payment was to be made. A. Yes.

Q. Now, what I want to find out is whether you had anything to do with concerning that bank's name? A. I had nothing to do with that.

Q. I see. That was Mr. Araki? A. That was Mr. Araki.

Q. Then you also arranged for, did you not, the issuance of a check on that bank account?

Mr. Bayles: Pardon me. I do object to the words "arranged for," your Honor.

Q. What did you do in connection with the issuance of a check? A. I had nothing to do with the issuance of a check. I made out the voucher without putting the bank in it, and it was up to Mr. Araki to instruct the girl as to—from what bank he wanted the money taken.

Q. Then if I understood your testimony on Wednesday to be, in response to Mr. Bayles's
809 question, that you went through this entire collection of paper work and then passing that over to Mr. Araki for signature, that wasn't correct? A. No.

Q. Now, let us see if we have got the actual situation. When you finished the preparation of the transfer vouchers— A. Right.

Q. —you turned that over to Mr. Araki? A. That is true.

Q. Now, what is the next step with which you personally had anything to do, so far as the cable instructions are concerned? A. That next step—
810 with the cable instructions I got the receipts back again, with the check.

Q. You had nothing to do as a normal matter with having the check issued or sent to the remittee? A. I sent it out after I got the check.

Q. Well, then, you did; you got the check back from Mr. Araki? A. Araki; right.

Q. Then go on from there. You arranged for sending the check to the remittee? A. Right.

Q. You also received back from the remittee the receipt signed by the remittee? A. That is true.

Q. Then did you make the entries on your books, in your accounts, under the name of your foreign branch—as, for example, in the case of a remittance from Yokohama, did you make an entry on the book of account maintained by the New York Agency under the name of Yokohama Specie Bank, Yokohama? A. No. That was done by the accounting department.

Q. By the accounting department. Where did the accounting department get its instructions to make that entry? A. From the voucher.

Q. This transfer voucher as a typical instance 812
(indicating Defendant's Exhibit O)? A. Yes.

Q. At what point did you send that voucher to the acounting department? A. After I had received the check.

Q. Even before the check was issued, or delivered to the remittee; is that right? A. Well, no. I received the voucher back with the check.

Q. Yes. A. And sent the check out.

Q. Yes. A. And after sending the check out, I in turn gave the voucher to the accounting department.

Q. I see. And that voucher was the accounting 813
department's authority to make the appropriate entries in the account of Yokohama Specie, Yokohama? A. That's true.

Q. Then the next step was to receive back from the remittee, receipt signed by the remittee for payment? A. That's true.

Q. And at that point did you make a further entry in the register of bills and T. T. payable? A. Stamping off that receipt had arrived?

Q. Yes. A. Yes.

Q. In other words, each time you had completed the payment— A. Right.

814 Q. And had returned to you the receipt for that payment, you went to the register of bills and T. T. payable and put a stamp over the item? A. Right.

Q. A stamp reading, "Receipt arrived"? A. That's true.

Q. And that operated to cancel out that particular item so far as the register of bills and T. T. payable?

Mr. Bayles: Pardon me, as to the word
815 "operated," I object.

Q. Well, in any event, so far as this register of bills and T. T. payable is concerned, no further entries were made on that register after you had placed the stamp "receipt arrived"? A. The only other entry that was made was when I advised the office that payment had been effected.

Q. When was that advice normally given? A. Anywhere from a week to two weeks later. It all depended on the time we had.

Q. You are talking now about a letter advice to the foreign office? A. A regular printed form
816 which we have.

Q. What is the symbol on this register of bills and T. T. payable which indicates that advice had been sent? A. I think the first one, No. 1, was sent on August 5th.

Q. In other words, the date appearing in the right hand column of the form under "Remarks"? A. That is right.

Q. In so far as the point of time is concerned, that entry then constitutes the final entry made on the register of bills and T. T. payable with reference to any given T. T. payable which has actually been paid? A. Been paid.

817

Q. Now, what other duties did you perform in the cashier's department, in addition to the duties with reference to cable instructions from abroad? A. Well, there were other duties such as drafts which were payable.

Q. Yes. What did you have to do in connection with drafts which were payable? A. Well, just offhand I don't remember all the details.

Q. Did you have anything to do with letters of credit? A. I had no connection with letters of credit whatsoever.

818

Q. Any other operation of the cashier's department of the bank with which you had any direct relationship? A. Not that I remember.

Q. Would it be fair then to summarize, to say that your principal duties had to do with bills and T. T. payable? A. Payable.

Q. Going back for a moment, Mr. Hapke, to your procedure in connection with the receipt of cable instructions from abroad; in connection with your initial entry on the register of bills and T. T. payable, was that made immediately upon receipt by you of cable instructions from abroad? A. What is this, prior to the freeze, or after?

819

Q. Yes, prior to the freeze. A. Prior to the freeze, yes; if the cable was in order and there was no mutilation, the entry was made immediately in the book when payment was effected.

Q. Now, was there entry made pursuant to general or standing instructions? Or did you take up with Mr. Araki each time whether it was all right to make that entry? A. Well, in the first place, all the cables that came into the place didn't come to me. They came to Mr. Araki.

Q. Yes. A. And Mr. Araki in turn gave them to me.

Q. Yes. A. And usually, which was the procedure, if there were any mutilations, he held on to them.

Q. In other words, so far as your functions were concerned, once you received from Mr. Araki the particular cable, you understood from that that it was your duty to go ahead and put it in the process of clearance and making the entry, all without further conversation about it? A. That is true; before the freeze.

821 Q. Now, after the freeze, you understood, did you not, that no entries were to be made in any book affecting a Japanese account without first having that entry licensed by the Treasury Department? A. Not Japanese, but any other——

Q. Well, my question may have been confusing. Of course, you were a Japanese bank, and you were working for a Japanese bank? A. That is true.

Q. And therefore, so far as restrictions applicable to Japanese were concerned, they applied to all of your business? A. Right.

822 Q. You also testified on direct examination that from time to time—and again prior to July 26, 1941— upon receipt of cable instructions from your Yokohama office with reference to a payment to Standard Vacuum Oil Company, you telephoned somebody at that company with reference to the instructions, is that right? A. That's true.

Q. Now, do you recall the individuals down there whom you normally called? A. Well, if I remember correctly, the first man that I did most of my business with was a man by the name of Mr. Richards.

Q. As of what time was this, Mr. Hapke? A. I mean, it was in the early part of 1941 or prior to

that. But I believe he took sick, and after that I think Mr. Midtbo.

Q. Did you ever have occasion to call Mr. Kennedy? A. I never remember speaking to the man.

Q. But you do recall speaking to Mr. Midtbo from time to time? A. Oh, yes, many times.

Q. In connection with such telephone calls, were they normally made before or after you made your entry on the register of bills and T. T. payable? A. Well, normally I would say that such conversations would take place before we made our entry on our register. 824

Q. That is to say, immediately upon receipt—

A. Receipt of instructions.

Q. —by you of cable instructions? A. That is right.

Q. And those instructions, as you have already testified, always came to you from Mr. Araki? A. That's true.

Q. In any of those telephone conversations with Mr. Midtbo or anyone else at Standard Vacuum, prior to July 26, 1941, do you recall ever discussing with them the question of whether you had funds available here in New York to make payment? 825 A. Offhand, I do not.

Q. Was there any instance—take the year 1941 from January to July 26, 1941—in which you advised Standard Vacuum of the receipt of cable instructions from Yokohama, in which payment was not thereafter or shortly thereafter made by you? A. From Yokohama?

Q. Yes. A. No, I do not.

The Court: We will take a recess until 2:15.

AFTERNOON SESSION.

GUSTAV L. HAPKE, resumed the stand and testified further as follows:

Cross examination by Mr. Connelly (continuing):

Q. Mr. Hapke, I show you Defendant's Exhibit S, being copy of cable dated August 29, 1941, from Yokohama Specie, Yokohama, to New York Agency. Is that the particular copy of the cable that you received in the cashier's department?
827 A. That is right. That appears to be the one Mr. Araki gave me.

Q. You anticipated my next question. And you received that copy of cable from Mr. Araki? A. That is true.

Q. He handed it to you in the cashier's cage? A. He either handed it to me, or put it on my desk; either way; it was given to me.

Q. Now, I call your attention to the fact that at the top, or near the top of that copy of cable there appear to be the letters "A P" written in red. Can you identify that notation? A. I didn't get you
828 clearly. In other words, you want me to interpret this meaning?

Q. No. I want to know whether you can identify that, as to whether that is something you put on, or somebody else? A. No. That is not my handwriting. That was put on by the cable department, I believe.

Q. And the other notation in black pencil "Mr. Midtbo," you have already testified was in your handwriting? A. That is my handwriting.

Q. Now, was it directly after Mr. Araki gave you this copy of cable that you telephoned Mr. Midtbo of Standard Vacuum? A. As far as I re-

member, yes. Shortly after I received that, I contacted Mr. Midtbo. 829

Q. You testified in your direct examination in connection with that telephone conversation on August 29, that, if I recall it correctly, you must have talked to Mr. Midtbo on that day because this letter of August 29 indicates it. A. Right.

Q. Do you have any independent recollection of that telephone conversation? A. Offhand, I do not.

Q. Do you remember where you were when you made the call? A. Well, I presume I was sitting at my desk, but I can't say definitely. 830

Q. Do you remember whether Mr. Araki was present when you made the call? A. That I can't say.

Q. You just have no independent recollection of that then? A. No.

Q. Showing you again Plaintiff's Exhibit 7, being the letter of August 29, 1941, from the New York Agency of Yokohama Specie Bank to Standard Vacuum, do I understand correctly that that letter was dictated by you following your telephone conversation with Mr. Midtbo? A. That's true. 831

Q. Then you handed that letter to Mr. Araki, did you? A. That's true.

Q. Attached to Defendant's Exhibit S is a copy of that letter of August 29, Plaintiff's Exhibit 7, which copy has under, or in the space for signature under the Yokohama Specie Bank, Ltd., a symbol of some kind. Can you identify that symbol? A. It seems to be the initials of Mr. Araki which he used from time to time when he signed letters.

Q. That is, initialed copies as distinguished from his signature on the original letter? A. That's true.

832 *Gustav L. Hapke, for Defendant—Cross.*

Q. After Mr. Araki signed that letter, did you have anything to do with its mailing, or was that something which he mailed out directly? A. I believe I sent it out, but I don't know whether I sent it out by messenger, or whether it was sent by mail.

Q. Referring again to Defendant's Exhibit S, the copy of cable from Yokohama, did you following receipt of that cable receive any confirmation from Yokohama, any written confirmation of its sending? A. I believe there was a confirmation sent and received from Yokohama—a mail con-
833 firmation.

Mr. Connelly: May I have that mail confirmation?

(Mr. Bayles produces a paper.)

Q. Counsel for defendant has produced a document entitled "The Yokohama Specie Bank, Ltd., Register advice of T. T. Sold," dated August 29, 1941, with a stamp indicating receipt in New York October 25, 1941. Is that the confirmation to which you referred in your testimony? A. Yes,
834 that's the one.

Q. That document has in the second column a heading "No". Can you tell me what that column heading is intended to be? A. "Number."

Q. Number of what, of the T. T.? A. Number of the T. T.

Q. And is the form the customary form in which Yokohama office of Yokohama Specie customarily confirmed cable instructions to pay? A. Yes, that seems to be the standard form used.

Mr. Connelly: I will offer that confirmation in evidence.

835

Mr. Bayles: No objection.

(Received in evidence as Plaintiff's Exhibit 18.)

Mr. Connelly: That is all.

Mr. Bayles: No further questions. At this time, your Honor, I should like to call a witness out of his order, because he comes from New Jersey.

The Court: All right.

836

CECIL ASHWOOD, residing at 195 Prospect Street, East Orange, New Jersey, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Bayles:

Q. Mr. Ashwood, will you kindly let me know, please, what your present occupation is? A. National Bank Examiner.

Q. For how long have you been a National Bank Examiner? A. 23 years.

837

Q. Do you remember the date that the Japanese freeze became effective in the United States? A. July 26, 1941.

Q. Now, on the night of July 25, 1941, were you ordered to report to the Federal Reserve Bank for instructions? A. Yes.

Q. For how long a period of time—withdraw that. At what time did you approximately arrive at the Federal Reserve Bank? Approximately? A. I believe it was about 9:00 o'clock.

Q. In the evening? A. Yes.

that later on we had in their place men from various other Treasury Departments. You are speaking of the night, of course, aren't you?

Q. Yes, sir. A. Yes.

Q. When you advised Mr. Nishi of the instructions you gave him, do you recall what he said to you?

Mr. Connelly: May it be understood, if the Court please, that my objection continues throughout this line of testimony?

845 The Court: You have an objection, certainly.

Q. In general. The substance is all I am interested in, Mr. Ashwood. A. I believe that all Mr. Nishi's comments were all rather questions as to what was to be done, and how things were to be handled. I have no definite recollection of the particular questions or comments he made.

Q. I see. Well, then, did you set up an office at the New York Agency? A. Yes.

Q. And did you have assistants going over the books, your assistants? A. Yes. That was for

846 current transactions. We didn't try to make any exhaustive audit of past transactions. I had an office in which I think from time to time anywhere from three to five men were working, and the rest of them I had up in the bank, banking space, at various desks.

Q. Well, did you and your assistants remain supervising the transactions of the Agency from July 26 until December 8, 1941? A. Yes, and some time after.

Q. Do you know the name of the Japanese agent in charge of the New York Agency, prior to

the time you came there? A. Mr. Nishi was agent in charge.

Q. In addition to acting as supervisor of New York Agency of Yokohama Specie Bank, did you have general supervision at other Japanese agencies throughout New York City? A. Only of the other Japanese banks.

Q. Japanese banks? A. Yes.

Q. What did you do in connection with the cash on hand when you arrived at the Agency? A. My recollection is that we sealed it up; put a man in charge of it, and sometime later, I should say 848 a matter of days, we sent the cash over to the Guaranty Trust and deposited it in the regular account of Yokohama Specie Bank.

Q. During the time of your supervision, did you have further discussions with Nishi, and if so, can you kindly explain what the substance of those discussions was? A. I had a good many discussions with Mr. Nishi. Some of the——

Mr. Connelly: It would seem that this even goes farther. This is purely hearsay that is now being called for—conversations 849 between this witness and Mr. Nishi, at which no representative of the plaintiff was even claimed to be present.

Mr. Bayles: I will limit that in connection with his supervision of the Agency.

Mr. Connelly: I understood the question so limits it.

The Court: It will be subject to your objection and a motion to strike out, and exception to you.

A. I recall that we had at least two or three—that I had at least two or three conversations with Mr.

Nishi about affairs in connection with the Agency, and it seems to me, as I recollect it now, that most of them were about minor matters. For instance, one I remember was in connection with the delay in getting a license for the payroll for the employees. Things of that nature.

Q. Did your supervision of the Agency cover all transactions of the Agency during the period of the freeze?

Mr. Connelly: I will have to object to the form of that question as calling for a conclusion.

The Court: I overrule the objection, with an exception.

A. I should say yes. All transactions, at least of any moment, all matters in connection with any payment of money or transfer of credits or really any business whatever.

Q. Well, from time to time did the employees and agents of the New York Agency discuss particular transactions with you and your assistants? A. Oh, yes, frequently.

Q. Now, were a number of permissive licenses obtained by outsiders shortly after the freeze, in connection with the New York Agency? A. Oh, yes.

Q. Upon receipt of a license, permissive license, did you adopt any particular procedure? A. Yes.

Q. Will you explain to the Court what that was? A. The first thing that was done was to look into the circumstances under which the license was obtained. That is, I should say the facts recited in the application for the license; tried to check them as far as possible, and then to determine whether or not the application had been made by a National—that is, whether the funds were to be

paid to a National; and then to attach to the——

Q. Pardon me. I am referring to a license. A. To the licenses. I am sorry.

Q. The license I am talking about. A. Well, when the licenses were granted, in some cases, if I hadn't made an investigation of the facts beforehand, I had to do it afterwards, and then decide whether or not to pay under the license.

Q. Probably I should start the questions in chronological sequence and set forth the procedure that was followed, where the Agency, on behalf of some remittee, made application for a license first. Can you explain that procedure, please? A. I believe in some cases that the people who had a claim against the bank requested help from the bank in making out their applications for licenses, and I think that in many cases that help was given to the extent that the application for a license was made out in the Yokohama Specie Bank.

Q. And what happened to that particular application within the bank? Was it submitted to you? A. Oh, yes, in every case.

Q. And what did you do with that particular application? A. Well, I investigated the circumstances of the application, and then questioned them whether or not the facts were correct as stated in the application—whether or not the claimant was a National. And then, based on those, as a primary consideration, I would make a recommendation to the Federal Reserve Bank as to whether or not a license should be granted.

Q. Well, did you have any general policy at that time in connection with the supervision of this New York Agency? A. Yes.

Q. Will you give that general policy, please? A. That was another factor which came into con-

sideration of these licenses—namely, the question of whether or not——

Mr. Connelly: Excuse me. May I ask whether this is something you are giving us in your own mind, or was this reduced to some formal instructions or form?

The Witness: It was our method of procedure, not in any specific instructions.

Mr. Connelly: I see. I will have to object to what went on inside the witness's
857 mind, then.

The Court: Did you carry into execution these things you had in mind, in the bank?

The Witness: Oh, yes.

The Court: You can say what you did do, then.

Q. Will you kindly proceed to state what you did do pursuant to those general instructions? A. In general, one of the things which determined whether or not we would approve an application, or payment under a license granted as the result of an application, was whether or not that claim
858 covered by that license was on the books of Yokohama Specie Bank, or a liability of the Yokohama Specie Bank, as of the date of freezing.

Q. You refer to the Yokohama Specie Bank. Are you referring to the New York Agency? A. New York Agency.

Q. In the event that such a claim was not a claim on the books, or a claim against the New York Agency as of the date of freezing, what did you do? A. Generally speaking, we recommended that the license should not be granted; or, if the license had been granted, we did not pay them.

Q. Now, in those cases where the particular claim was not a claim against the New York Agency at the time of the freeze, or upon the books at the time of the freeze, what did you do? A. We didn't pay them.

Q. Was that the general practice, whether they obtained a license or not? A. Yes.

Q. Now, did you make any arrangements for the situation where a third party submitted an application to the Federal Reserve, without it going through the New York Agency? In other words, what steps did you take in connection with 860
that particular type of application? A. There wasn't any immediate—some time after I took over, I found it necessary to arrange with the Federal Reserve Bank, that no licenses should be granted unless I had a chance to pass on them first.

Q. Whether they were submitted through the New York Agency, or from outside the New York Agency? A. Any way.

Q. In connection with your supervision of the activities of the New York Agency, did you have a person listening in to all telephone calls that 861
came in and went out? A. Oh, no.

Q. They were permitted to carry on the normal routine telephone calls? A. Surely, yes.

Q. And did you also permit the Agency to call and give the usual advice of receipt of instructions to pay? A. Yes.

Q. During the freeze? A. Yes.

Q. Was there submitted to you as supervisor during the freeze a number of instances where telegraphic instructions from one of the foreign branches of Yokohama Specie Bank, New York Agency, came into that Agency after the freeze,

862 and these instructions were to pay someone in New York a certain amount of dollars? Were a number of those instances submitted to you? A. My recollection is that there were several of them. Many of them.

Q. What did you do in general in connection with those particular authorizations to make payment? I am referring now to formal applications being submitted to you in connection therewith, for licenses.

863 Mr. Connelly: Do I understand you are asking again asking for the practice followed in connection with receipts of cable instructions, or whether you are asking the witness as to what happened at a particular occasion?

Mr. Bayles: No. I am asking the witness what he did in connection wth applications for licenses by the New York Agency in connection with cable instructions to make payment, received during the freeze.

Mr. Connelly: I am going to object to this again, if the Court please, having nothing possibly to do with the Standard Vacuum transaction. I take it you are not asking about the Standard Vacuum?

864 Mr. Bayles: Not in particular, no.

Mr. Connelly: What he did with reference to other instructions received to pay other people in New York, I can't conceive would have any bearing on this case.

The Court: I will take it subject to a motion to strike.

A. On all such transactions when the application had been made for a license, we recommended to

865

the Federal Reserve Bank that the license should not be granted. I say, in all such cases. That is to the best of my recollection.

Q. Did the Federal Reserve Bank follow your recommendations either in granting or refusing to grant a particular license, in those cases, where you indicated your recommendations? A. In most cases, especially after we had been in charge perhaps a month or so.

Q. I show you this letter dated August 29, 1941, Plaintiff's Exhibit 7, and ask you if you can recall seeing that letter prior to December 8, 1941? 866
A. No. I have no recollection of it.

Q. I should like to ask you also what you did in this particular type of instructions, in the event that a person with a yen bank account at one of the foreign branches of the Yokohama Specie Bank desired to have that account transferred, and in some way after the freeze, set up as a credit in dollars in his favor against the New York Agency. What did you do about that particular type of application?

Mr. Connelly: Objected to as hypothetical, wholly vague; no testimony that any such transaction took place, no indication of how this witness could know what the desires of somebody in Japan were. 867

The Court: Reframe the question.

Mr. Bayles: I will reframe it.

Q. Are you familiar with the expression, "Transfers of Credit"? A. Oh, yes.

Q. Well, now, were there any attempted transfers of credit during the freeze from some foreign branch to the New York Agency?

868 Mr. Connelly: I am going to have to object on the further ground, unless there is some definition of what this witness means when he talks of transfer of credit.

Q. Well, I will say this: Are you familiar with the expression "Transfers of credit" as used in the Executive Order 8389?

Mr. Connelly: Well, of course that illustrates the difficulty we are getting into. We
869 are simply trying to get a construction of the law by this witness. I submit it is wholly objectionable.

The Court: Well, we are trying to find out what he did.

Mr. Bayles: That is right, in connection with one of these cases. That is all I am trying to do, your Honor; no construction of law.

Q. I am asking, Mr. Ashwood, what did you do in connection with a proposed transfer of credit during the freeze?

870 Mr. Connelly: But my point is that transfer of credit is a legal term used in the Executive Order. I have no objection to his asking about some particular transaction. Whether that transaction is a transfer of credit within the meaning of the Executive Order is a question of law.

Mr. Bayles: All right.

Q. Now, Mr. Ashwood, coming back to this case of a person in the Yokohama Specie Bank of Yokohama having an account with the New York Agency of Y. S. B. in New York, a dollar account,

and instructions were received from Yokohama to debit that account and credit some other account in the New York Agency, is that a proposed transfer of credit?

Mr. Connelly: I am going to object to that, because he is calling for a conclusion of law. Whether it is a transfer of credit within the meaning of the Executive Order is certainly a legal question.

Mr. Bayles: In that connection, your Honor, the words "transfers of credit," 872
they are prohibited under the provisions of 8389. I merely am asking these questions to show that these transfers were prohibited.

Mr. Connelly: Counsel admits that he is trying to prove by this particular witness that a particular type of transaction was prohibited by an Executive Order. Why don't you ask him about the receipt of cable instructions, after they were received, what did he do with them? They don't have to be characterized.

873

The Court: Yes.

Mr. Bayles: All right, I will take your suggestion, Mr. Connelly.

Q. In the event cable instructions were received from Yokohama, authorizing the New York Agency to debit its account and credit some other account, what did you do?

Mr. Connelly: First, may we have it appear that there were such transactions or were such cables received; if it be a fact.

The Witness: I don't recall any partic-

874 *Cecil Ashwood, for Defendant—Direct.*

ular instances where those instructions were received. You understand, the Yokohama Specie Bank was not a bank of deposit.

Q. That is right. A. Any such cable instructions of that nature would be of necessity very few and far between. I have no recollection of them, of any particular ones. You are speaking of course of instructions to debit one account on the books of Yokohama Specie Bank, and credit
875 another account; merely a book entry?

Q. That is right. A. That answer still stands then.

Q. Under your instructions to the New York Agency, in the course of your supervision, did you permit the New York Agency to incur a new liability during the freeze?

Mr. Connelly: I will have to object, if the Court please.

The Court: Sustained.

Mr. Bayles: Exception.

876 Q. Perhaps I didn't make myself clear before, Mr. Ashwood, on this transfer of credit. Did you permit the New York Agency to transfer a credit which it owed to, we will assume, the Yokohama branch of the Agency, to anyone else after the freeze, without a license and your approval being obtained?

Mr. Connelly: The question is just as objectionable as the other one, if the Court please. It doesn't identify——

The Court: Overrule the objection.

A. No, I did not, not to my recollection.

Q. During the time of your supervision of the New York Agency, did you from time to time discuss with Mr. Lyons your various duties and the policies you were following? A. Yes.

Q. From time to time did you render reports to the Comptroller of the Currency? A. At least once, and perhaps two or three times.

Q. I show you this letter dated August 15, 1941, and ask you whether you can identify your signature. A. Yes, that is my signature.

Q. Did you send this report to the Comptroller of the Currency pursuant to your duties as supervisor? A. Yes. 878

Mr. Bayles: I offer this letter in evidence, dated August 15, 1941.

Mr. Connelly: In the interest of time could we have some indication of the purpose of the offer?

Mr. Bayles: Just to indicate the scope of his supervision.

Mr. Connelly: This appears to be a letter from this witness to the Comptroller of the Currency, reviewing a wide variety of matters in connection with the operations of Yokohama Specie Bank. I object to it as having no materiality to any issue here; on the further ground that it is incompetent because it is hearsay so far as statements of fact therein contained. 879

The Court: It may be marked, subject to your motion to strike, and an exception.

(Received in evidence as Defendant's Exhibit T.)

Q. Mr. Ashwood, this closing report of the Yokohama Specie Bank, Ltd., New York Agency,

880 was that obtained from the files of the Chief National Bank Examiner, New York? A. Yes. This is a report filed by Mr. Owen, one of our assistants.

Q. Is that a closing report of the operations, or of the supervision rather of the New York Agency, at the close of December 6, 1941? A. December 6.

Q. That is the date? A. Yes.

Mr. Bayles: In that connection, your
881 Honor, I offer in evidence the first two sheets of this closing report.

Mr. Connelly: Same objection.

The Court: Same ruling.

(Two sheets received in evidence as Defendant's Exhibit U.)

Q. Was this report which has been marked in evidence as Defendant's Exhibit U, made in the regular course of his duties by Mr. Owen, Assistant National Bank Examiner, to Mr. Gibbs Lyons, the Chief National Bank Examiner? A. Yes.

882 Q. Now, in the course of your supervision of the New York Agency, did you instruct the officers, agents, per procs., whatever were there, not to incur any obligation without procuring a license and your approval? A. I told them that they could not.

Q. At any time as supervisor of the New York Agency, did you approve the incurring of an obligation on their part to Standard Vacuum Oil Company in the sum of $557,561.25?

Mr. Connelly: I object to it, calling for a conclusion.

883

Mr. Bayles: In connection with the prior answer, your Honor.

The Court: Overrule the objection, with an exception.

A. No, I did not.

Mr. Bayles: Your witness.

Cross examination by Mr. Connelly:

Q. Mr. Ashwood, you were shown this letter of August 29, 1941, Plaintiff's Exhibit 7, being a letter from Yokohama Specie Bank by Araki to Standard Vacuum Oil Company. You testified that you had no recollection of having seen that letter prior to December 7, 1941? A. That's true.

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Q. Am I correct in understanding your testimony to be, not that you deny having seen that letter, but merely that you have no recollection? A. That is correct, I have no recollection of it.

Q. But you don't deny that you saw it prior to that time? A. No.

Q. As a matter of fact, have you any independent recollection of the receipt by New York Agency of the Yokohama Specie Bank, of the cable instructions on August 29, 1941, to pay Standard Vacuum $557,000 odd? A. Only in so far as I have a recollection that an application was made. Therefore the cable advice must have been received.

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Q. And you have a recollection that the application was in some manner brought to your attention, or the fact that an application for a license was being made? A. Yes.

Q. Was that contemporaneously with the filing of the application? A. That I couldn't say after all this time.

Q. I see. That's all.

886 *Eugene J. Mulligan, for Defendant—Direct.*

EUGENE J. MULLIGAN, residing at 253 Bement Avenue, Station Island 10, New York, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Bayles:

Q. Mr. Mulligan, how long were you employed by the New York Agency at Yokohama Specie Bank, prior to the close of December 8, 1941? A. Approximately 32 years.

887 Q. As far as the period of the length of service is concerned, were you the senior American in length of service? A. That is correct.

Q. Now, were you ever an officer, agent, sub-agent, or per pro. agent? A. No.

Q. Of the New York Agency? A. No.

Q. Now, are you familiar with the personnel structure of the New York Agency? By that I mean the agents, the sub-agents, and per pro. agents? A. Yes.

Q. Now, in 1941, who was the agent in charge? A. K. Nishi.

888 Q. Do you recall who the sub-agents were? A. T. Kanai and T. Doida.

Q. Now, these three gentlemen received their appointment directly from Yokohama Specie Bank in Japan? A. That's correct.

Q. And under powers of attorney issued directly to them from Japan? A. That's correct.

Q. Now, did Mr. Nishi designate per pro. agents of the New York Agency? A. Yes.

Q. For the record, do you know what "per pro." stands for? A. "Per procuration."

Q. On June 16, 1941, were these the signatures of the various agents and p. p. agents of the New

York Agency of Y. S. B. Ltd. (showing paper)? A. That's correct.

Q. And is this the new signature of a new per pro. agent under date of December 1, 1941 (showing another paper to witness)? A. That's correct.

Mr. Bayles: I offer these in evidence.

Mr. Connelly: For my information, is there any issue as to any of the signatures, their authenticity?

Mr. Bayles: No.

Mr. Connelly: Objected to as immaterial. 890

The Court: They may be marked, with an exception.

(Two papers marked Defendant's Exhibit V and V-1 in evidence.)

Q. Did each of these agents, sub-agents and per pro. agents speak English? A. That's correct.

Q. They had desks upon the premises of the New York Agency? A. That's correct.

Q. Did Mr. Nishi have his own office? A. He was on the same section with the other agents.

Q. These gentlemen appearing on Defendant's 891 Exhibits V and V-1—were they the only persons who signed checks on behalf of the New York Agency? A. At those dates, yes.

Q. Or enter into any contracts on behalf of the New York Agency?

Mr. Connelly: I object to that.

The Court: Sustained.

Q. Or signed any contracts on behalf of the New York Agency? A. The answer is the same as previous—at that time, yes.

892 *Eugene J. Mulligan, for Defendant—Direct.*

Q. Or who signed any letters on behalf of the New York Agency? A. At that time, yes.

Q. Do you know whether any of the Americans employed at the New York Agency—just when limit it to 1941—had any authority to sign checks, notes, contracts, letters, on behalf of the New York Agency? A. No Americans had any such authority.

Q. Did you work directly under the secretary of the New York Agency? A. The secretary and agents.

893 Q. Prior to the freeze, in July 1941, what were your duties in connection with the New York Agency? A. Chiefly on the credit information, and also the personnel problems concerning Americans.

Q. I wonder if you could elaborate a little more on the personnel problems you mentioned. A. In the event that there was any dispute in any of the departments regarding any Americans, the Americans were supposed to consult with me; and I in turn would take it up with the secretary, and at various times consult, with the secretary, the

894 various agents.

Q. What was the name of the secretary? A. Tsukino.

Q. In connection with credit information that I believe you testified to, what was that type of work you did there? A. That was gathering and dispensing credit information; answering inquiries received from various offices, including our own branches.

Q. Did you ever work in the export or letter of credit departments in 1941 or 1940? A. In the export department, no, not in 1940 or 1941.

Q. Or in the letter of credit? A. No.

895 Q. Were you in any manner employed in the cashier's department at the Yokohama Specie Bank, New York Agency? A. No.

Q. Now, did you have any contacts or dealings with Standard Vacuum Oil Company of New York prior to the freeze? A. Yes.

Q. With what gentleman of that firm did you have these contacts? A. Mr. Kenney.

Q. Did you see him a number of times prior to the freeze, or several times? A. I have seen him several times prior to the freeze.

896 Q. Was Mr. Kenney in the office of the New York Agency prior to the freeze? A. Yes.

Q. Have you any recollection of the number of times that he called at the New York Agency? A. Well, to my recollection, I have seen him once up there.

Q. Do you recall in what connection Mr. Kenney was at the New York Agency, if you know? A. It was in connection with overdraft privileges being granted by our China branches to their companies in that same country, and in obtaining a letter of guarantee from the Standard Vacuum, New York.

897 Q. Did you introduce Mr. Kenney to anyone at that time, or bring him in to see anyone at that time? A. Yes.

Q. Do you recall the name of who it was, the agent or employee? A. I don't recall the name of the agent, but I will say it was our No. 2 man, or second agent in command.

Q. To clarify the record, branches of Standard Vacuum Oil Company in Asia were interested in obtaining overdraft privileges?

Mr. Connelly: No, I object to that.

Mr. Bayles: I will withdraw it.

Mr. Connelly: This witness can't testify to the branches of Standard Vacuum.

Q. These guarantees you spoke about, concerning which Mr. Kenney called at the office—what guarantees were they—of the New York branch of Standard?

Mr. Connelly: Now, does this have to do, Mr. Witness, with something that was in
899 writing, a guarantee, is that what you mean?

The Witness: Yes. There is a written guarantee.

Mr. Connelly: I will have to object to what the witness says about it. The document speaks for itself.

Mr. Bayles: I will have them produced, Mr. Connelly, then. I will withdraw the question for the time being.

Q. Did you ever have any dealings with Mr. Kenney in connection with any letters of credit?
900 A. No, not to my recollection.

Q. Or did you have any dealings with Mr. Kenney prior to the freeze in connection with any work of the cashier's department? A. No, not to my recollection.

Q. Do you recall speaking to Mr. Midtbo prior to the freeze? A. No.

Q. Do you recall ever seeing Mr. Midtbo prior to the freeze? A. No.

Q. Now, was that in general the nature of your work prior to the freeze? A. That is correct.

Q. I believe that you were senior American clerk also of the New York Agency? A. That's correct.

Q. Could you explain to his Honor whether you performed any additional duties other than you mentioned? A. Before or after the freeze?

Q. Before the freeze. A. Not to my recollection, of any importance. That was my chief duties.

Q. Now, come to the freeze. On the morning of July 26, 1941, do you recall Mr. Ashwood's appearance at the New York Agency, and the various assistants that he had with him? A. I do.

Q. Do you recall any conversations between Mr. Ashwood and Mr. Nishi, or between Mr. Ashwood or any other agent of the Agency, at which you were present? A. No, I do not. 902

Q. Well, do you recall receiving any instructions as to the operations of New York Agency during the period of the freeze? A. Yes.

Q. What was the nature of those instructions?

Mr. Connelly: I assume my objection will continue?

The Court: Yes.

Q. What was the nature of those instructions? A. Mr. Nishi called me in and told me to consult with Mr. Ashwood, and I consulted with Mr. Ashwood, as to what policy or procedure we could follow now with the freezing regulations. And he told me that everything would have to be under a license, and also all applications for a license would have to be submitted to him. 903

In addition to that, Mr. Nishi, after having a talk with Mr. Ashwood, instructed me to inform all the Americans in each department that all transactions were to be submitted to Mr. Ashwood, and that no entries were to be made on the books unless Mr. Ashwood's approval and license were obtained.

Q. Did you give those instructions? A. And I gave those instructions.

Mr. Bayles: If your Honor please, something just came up now. I was advised by my assistant here that Mr. Ashwood has a further recollection in connection with this $557,000. So may I interrupt Mr. Mulligan's testimony to recall Mr. Ashwood for one question?

The Court: Yes.

CECIL ASHWOOD, previously sworn, was recalled to the stand:

Re-direct examination by Mr. Bayles:

Q. Mr. Ashwood, do you know that the application by Standard Vacuum Oil Company for a license approving payment of this $557,00 odd, was denied by the Treasury Department in January 1942? You are sure of that? A. No. I know that —I have a recollection that an application was made, and an impression or recollection that I disapproved it. I can't definitely say what action the Treasury took on it.

Q. But you have a recollection of disapproving, some recollection of disapproving the application? A. Yes.

Re-cross examination by Mr. Connelly:

Q. Was that in accordance with your practice, Mr. Ashwood, of communicating to the Federal Reserve Bank your approval or disapproval of any application? A. Yes, that is correct.

Q. When you say you have some recollection of having disapproved this application, you mean to say you have a recollection of having told the Federal Reserve Bank that in your opinion the application should be denied? A. Yes.

Q. I see. That is all.

Mr. Bayles: Thank you, Mr. Ashwood.

EUGENE J. MULLIGAN, resumed the stand and testified further as follows: 908

By Mr. Bayles (continuing):

Q. Now, after the freeze, what type of work in general did you do? A. Supervised the applications made by our various departments, to see that they were in proper form; and in addition, handling the personnel, the American staff.

Q. I would just like to go into the procedure set up in the New York Agency for these applications for licenses. For example, assuming an application originating in the cashier's department, can you explain to his Honor step by step what happened 909 in connection with that application? A. The cashier's department would compile or make out the application, and then submit the application, together with the relative data, to me, or to one of my assistants; and we would check it to see if it was drawn in the proper form, and that all points were covered in such application.

Q. Assuming the application were proper in form, what was the next step? A. We would return it then to the respective departments and they would have it signed by the per pro. agent in charge of that department and brought back to

me for notarization. And in turn I would then send it in to Mr. Ashwood for whatever action he saw fit, and to be sent to the Foreign Funds Control.

Q. Upon receipt of either a disapproval or approval of the license by the Federal Reserve Bank, what action was then taken? A. We would receive a copy of the denial, or the license; at least, we would receive the original, and a copy of it would be made, and one given to Mr. Ashwood, and the original would be given to the respective depart-
911 ment. And we would keep the copy also to apply against that application.

Q. Well, in the event it was denied—I mean, were granted or denied—the same procedure would be followed? A. If it was granted or denied, that procedure would be followed.

Q. Now, where were you physically located in so far as the cashier's department was concerned? A. We were right in back of the cashier's department, on the Broadway front.

Q. Were you located near Mr. Ashwood? A. No. Mr. Ashwood was quite some distance away.

912 Q. You had some assistants with you? A. Yes.

Q. Well, now, do you recall whether in addition to that work, you personally familiarized yourself with the freezing regulations, the various orders and general rulings, and so forth, that had come down? A. That was part of the job in respect to supervision of the applications.

Q. As I understand it, Mr. Mulligan, the only time you were advised as to any particular transaction the Agency was planning to enter into was after the Agency submitted an application, and submitted the form of the application to you? A. That's correct.

Q. Where an outsider submitted directly to the Federal Reserve, his own application for a license, did you have anything to do with that particular transaction? A. No.

Q. Now, from time to time did you answer telephone inquiries from outsiders in connection with applications which they were preparing? A. That the outsiders were preparing?

Q. Yes. A. If they called up and wanted information, yes, or my assistant, if I didn't happen to be there at that time. 914

Q. Now, in general, what type of information would these outsiders be interested in obtaining? A. Information in order for them to submit their application in proper form, for us to make our respective entries on our books, providing payment was effected.

Q. In other words, in their applications these outside parties would have to set forth exactly what debits or credits the New York Agency would make, in the event it made payment? A. That's correct.

Q. Now, did you receive very many of these inquiries? A. Well, I know there were quite a 915 number, but I have no recollection of what the number was. We kept no record of them.

Q. I was going to ask you, did you keep any record or entry of any time a telephone call would come in? A. No. No such record was kept.

Q. You would give these people this general information? A. That's correct.

Q. Now, during the period of the freeze, what bank account was the New York Agency in general using?

Mr. Connelly: I haven't interrupted, but we are getting back to very leading ques-

tions. I do think the witness should be permitted to testify.

Mr. Bayles: I will rephrase it.

Q. During the period of the freeze, did the New York Agency, when it made its payment, customarily draw its check against a particular bank? A. Yes.

Q. Which bank was that? A. Guaranty Trust Company.

Q. Would you call that the operating bank account of the New York Agency during the freeze?
917 A. Well, I would say it is the active account.

Q. Active account. When you would give this general information you spoke of to outsiders, would you indicate, if payment were made by the New York Agency, against what bank account its checks would be drawn?

Mr. Connelly: I would have to object to the question, calling for conversations that this man had with some other people. No connection with Standard-Vacuum at all. I must object as immaterial and incompetent.

918 The Court: He may answer the question. Exception.

A. To permit us to draw a check on the Guaranty Trust Company.

Q. At the time of these conversations, or answers to inquiries that you gave, did you know or did you have before you, the exact balance of the New York Agency with the Guaranty Trust Company?

Mr. Connelly: I will have to object to that as too general.

The Court: Sustained.

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Q. In the course of your duties after the freeze, in connection with answering these inquiries, did you refer to the particular balance which the New York Agency had in the Guaranty Trust Company? A. No.

Q. Did you keep a record or memorandum of the amount, the particular amount, involved in any particular one of these inquiries? A. No.

Q. Before answering these inquiries, would you consult with the cashier's department, for example? A. No.

920

Q. You have been present in court here and heard the testimony of the various witnesses, Messrs. Hapke and Ashwood? A. Yes.

The Court: We will take a recess until 10:00 o'clock Monday morning.

(Adjournment taken to 10:00 A. M., September 30, 1946.)

New York, N. Y. Monday, September 30, 1946.

(Trial Continued, Pursuant to Adjournment.) 921

Mr. Bayles: If your Honor please, I would like to read some parts of Mr. Mulligan's examination before trial, a very brief portion thereof, your Honor, which was omitted by Mr. Connelly's reading.

The Court: Have you an extra copy, so I may follow?

Mr. Bayles: Yes. I am going to start, your Honor, on top of page 20. This is the last question which was asked by Mr. Connelly on that particular page:

922 *E. J. Mulligan, for Defendant—Recalled—Direct.*

"Q. And Mr. Araki would then turn it over for processing to Mr. Hapke, is that correct? A. That's correct.

Now, continuing:

"Q. Do you know what Mr. Hapke would do with it (referring to cable instructions to pay)?, or do you know what he did in this case with this particular cable? A. No, I do not."

Down on the bottom of the page, your Honor:

923 "Q. Do you recall when you first saw the original or a copy of the cable of August 29 (referring to Plaintiff's Exhibit 11 here and Defendant's Exhibit S)? A. No.

"Q. In the ordinary course of your duties, when would you see a cable or a copy like that? A. I would not see such a copy.

"Q. You would not see a copy of any cables of that nature? A. That's correct.

"Q. Only the cashier's department and the cable department would have copies? A. That is correct."

924 Now, on the bottom of the page, 21:

"Q. Do you remember whether Mr. Hapke ever spoke to you about this particular instruction (referring to cable instructions of August 29)? A. No.

"Q. In other words, you don't remember whether he spoke to you or not? A. He would have no occasion to speak to me about that."

Mr. Bayles: That will be all of the examination.

EUGENE J. MULLIGAN, resumed the stand and testified further as follows:

By Mr. Bayles (Continuing):

Q. Mr. Mulligan, do you know whether Mr. Nishi and the other Japanese agents, sub-agents, and per pro. agents, in 1941 were repatriated to Japan? A. They were not repatriated in 1941.

Q. They were repatriated as of what time? A. 1942.

Q. Now, were you the senior American in length of service in the entire New York Agency? A. 926
That's correct.

Q. Do you know whether Mr. Hapke was the senior American in length of service in the cashier's department? A. That's correct.

Q. Did Mr. Ashwood, the Federal Supervisor, issue any instructions during the freeze that all outgoing letters by the New York Agency were to be submitted to him before being sent out?

Mr. Connelly: I object to the form of the question as being leading.

The Court: Overrule the objection; except- 927
tion.

A. No. Mr. Ashwood issued no such instructions.

Q. At the last session on Friday, Mr. Mulligan, you were testifying to your general duties during the freeze. In connection with answering inquiries, telephone inquiries that would come in pertaining to what entries would be made by the New York Agency if payment were made, do you recall whether, before answering these inquiries on the telephone, you would consult with the cashier's department? A. No, I would not.

928 *E. J. Mulligan, for Defendant—Recalled—Direct.*

Q. Would you discuss the matter with anyone in the Agency before giving general information?

Mr. Connelly: If the Court please, I would like to renew my objection at this time. It is quite obvious that under the guise of inquiring as to normal practice, counsel is endeavoring to obtain from this witness a statement of what he customarily did or may have done, which counsel will then be able to argue was in fact done in
929 the case of the matters which are material here; and I submit that it is prejudicial to the interests of this plaintiff to permit this type of testimony, having no materiality in and of itself to the issues in this case.

The Court: Sustain the objection to the form of the question.

Q. Prior to answering the telephone inquiries, did you discuss the particular matter with anyone in the New York Agency?

Mr. Connelly: I make the same objection.
930 The Court: Overrule the objection.

A. No.

Q. Do you have any present, any independent recollection of speaking to a Mr. Kenney of the Standard Vacuum Oil Company on August 29, 1941? A. No, I have no such recollection.

Q. I show you this letter dated August 29, 1941, Plaintiff's Exhibit 7, and a copy of the cablegram of August 29, Defendant's Exhibit S, and ask you whether you saw that particular letter or cable prior to the time the New York Agency was suspended by the Superintendent of Banks? A. No, I did not.

Q. As I recall Mr. Kenney's statement, he testified that he had some matter involving a letter of credit with you. Did you ever have any letter of credit transaction with Mr. Kenney? A. Not to my recollection. That is the export department.

Q. As I recall your testimony, you stated that you did have some business with Mr. Kenney in connection with procuring guarantees from the Standard— A. Yes, for overdrafts.

Q. I show you this letter dated June 10, 1941, from Standard Vacuum Oil Company to the Yokohama Specie Bank, Ltd., and ask you whether you 932
can identify that as one of the letters received by the New York Agency? A. Yes, that's correct.

Q. I also refer you to a copy of letter from New York Agency to Vacuum Oil dated June 11, 1941, and ask whether that is a copy of a letter sent by the New York Agency to Standard Vacuum? A. That's correct.

Q. Do you have the original letter, Mr. Connelly?

(A paper is produced.)

Mr. Bayles: I offer in evidence, your 933
Honor, original letter from Standard Vacuum Oil Company, dated June 10, 1941, and reply thereto from Yokohama Specie Bank, Ltd., New York Agency, dated June 11, 1941, which Mr. Connelly has produced.

Mr. Connelly: Both letters are objected to as immaterial and irrelevant.

The Court: How are these letters relevant? I don't see their relevancy.

Mr. Bayles: It is quite true, your Honor, they are not particularly relevant to the

issue in this case, except to indicate the type of transaction which Mr. Mulligan participated in prior to the freeze. Mr. Connelly objected, as I recall, to testimony as to written guarantees on Mr. Mulligan's direct examination. I am offering this to show the type of transaction which he participated in; only for that purpose.

Mr. Connelly: This relates to an entirely different transaction than the one that is here in suit. I can't conceive of its having

935 any materiality here, and it just opens up a wholly new subject of inquiry, if we get into this.

Mr. Bayles: I don't expect to pursue the line any further than offer the letters in evidence and ask the witness if this is the nature of the transaction in which he participated, in procuring that particular type of guarantee.

The Court: Is there a claim of any guarantee of this sort in this matter, between the Standard Vacuum and this defendant?

936 Mr. Bayles: No, your Honor, but there may be a question as to authority or lack of authority on the part of Mr. Mulligan. I would like to show, if I could, as to what type of transaction with Standard Vacuum he had any connection.

The Court: Mark them for identification, and exception.

(June 10, 1941 letter marked Defendant's Exhibit W for Identification; June 11, 1941, letter marked Defendant's Exhibit W-1 for Identification.)

Q. Mr. Mulligan, did you ever state to anyone in Standard Vacuum Oil Company that the New York Agency would make payment of the $557,000 involved in this particular suit? A. No, not to my recollection.

Q. Did you ever state to anyone at the Standard Vacuum Oil Company that the New York Agency would make payment to Standard of the $557,000 out of funds which the New York Agency had on deposit with the Guaranty Trust Company? A. No, not to my recollection.

938 Q. Did you ever have authority to m ke such statements?

Mr. Connelly: I object to that, calling for a conclusion.

The Court: Sustained as calling for a conclusion.

Mr. Bayles: No further questions.

Cross examination by Mr. Connelly:

939 Q. Mr. Mulligan, on your direct examination, you testified to your duties during the period from July 26, 1941, to December 8, 1941, in connection with applications for Treasury licenses. Do you recall, Mr. Mulligan, that in connection with your filing or preparing such applications, it was always necessary to have first the bank account out of which the Yokohama Specie, New York Agency, proposed to make payment; and secondly, the name of the account or accounts carried on any books of the Agency, which would have to be debited or credited in connection with such payment? A. Well, the applications would have to

940 *E. J. Mulligan, for Defendant—Recalled—Cross.*

contain the name of the bank from which payment would be effected, if made.

Q. Yes. A. Now, at times I think that my recollection—this is only recollection because it is so long ago—that we would request that certain entries would be permitted in our books, and we wouldn't go into detail as to all the entries.

Q. But don't you recall, Mr. Mulligan, that it was always necessary, in order for you to carry through the transaction, that the license obtained from the Treasury Department specifically
941 authorized you to draw a check on a particular bank account, and specifically authorized you to debit and credit the accounts maintained on the books of the Agency, which were to be debited or credited in connection with such payment? A. I agree with you.

Q. Referring to the regular course of business, the regular practice that you followed, which you testified to on direct examination, was it any part of your duties to determine which accounts maintained on your books would have to be or would be debited or credited, in connection with any
942 payment? A. No.

Q. From where, from what source did you obtain that information? A. That would be incorporated by the department that compiled the application.

Q. I had understood from your direct testimony that you had general charge of the preparing of applications. A. No, not the general application or preparing of it. The supervisory authority.

Q. By that do you mean to say that somebody else would prepare the application in the first instance and then you would approve it as to form,

without any more— A. They would supply the data and we would check.

Q. That is what I want to get at. Do you mean check over, or do you mean physically to write it down in the form of the application for license? A. No, just for checking purposes.

Q. In other words, in connection with the cable instruction from abroad to pay a sum of dollars here in New York, is it your recollection that an application for license prepared by the New York Agency of Yokohama Specie would be prepared in the first instance by somebody in the cashier's 944 department? A. That's correct.

Q. And you had nothing to do with filling in any of the information going in that application? A. No.

Q. What do you do in connection with such application? A. Just review the application, and see if it complied with the regulations, and that there was sufficient information in there to be submitted to the Foreign Funds Control.

Q. Was it your practice in that connection to verify with the person in the cashier's department, who had prepared the application, the par- 945 ticular account or accounts that would have to be debited or credited if the transaction were carried out? A. No.

Q. You would simply take that from the cashier, or whoever in the cashier's department prepared it? A. That's correct.

Q. And accept that on the basis of his statement. Now, what about the statement of the bank account, or the account with the bank on which the check was to be drawn? Was that the same situation there? A. The same situation there.

Q. All right. Now, you also testified in certain instances during that period of time, applications for a license authorizing the payment by New York Agency of Yokohama Specie were prepared outside the bank, by the prospective recipient of the money; is that correct? A. That's correct.

Q. And can you recall about how many such instances there were during the period from July to December of 1941? A. No. We kept no record.

947 Q. I am not asking at the moment whether you kept a record, merely whether you recall how many such instances there were. A. No.

Q. It was a very small number of instances, was it not? A. Well, I wouldn't say that. I think between my assistants' inquiries received and what I received, I would say that must have been rather numerous.

Q. I see. Then in connection with the preparation of such application by an outsider, where inquiry was made of you, or of someone in your department, with reference to the accounts to be debited or credited for purpose of insertion in the

948 application for license, you understood at the time, did you not, that unless the license specified the particular bank account out of which the payment was to be made, unless it specified the particular accounts carried on your books which were to be debited or credited, that you would not be able to carry out the transaction without some amendment of the license? A. That's correct.

Q. So in connection with an inquiry made of you for the purpose of obtaining that information to put in the application for license, where did you go to obtain that information? A. In respect to the bank account?

Q. Well, with regard to the bank account, with regard to the debits and credits to be made in the accounts maintained on your books? A. Well, the information that would have been given to us by the inquiry, we could gather the information from the nature of that transaction.

Q. Yes; but you have already testified that it was no part of your duties to determine what particular bank account would be used to make payment or to determine what debits or credits would have to be made on your books; is that correct? 950
A. That is on our own applications.

Q. Well, in connection with any payment made pursuant to a license, whether the application was made by you or was made by somebody else, it was no part of your duties to determine what particular bank account would be used, or what debits and credits would be made on your books after the payment was licensed, was it? A. Not after the payment was licensed, no.

Q. Perhaps my question was confusing. It was no part of your duties to make that determination in connection with the application for a license? A. We would have to tell the inquirers what debit 951
or credit, after he explained the transaction, would be permitted on our books.

Q. I appreciate that. When you say "We", you mean the New York Agency of Yokohama Specie? A. Yes, or one of my assistants.

Q. That is what I want to get at. Then it was a part of your duty to determine what debits and credits would have to be made in order to reflect a particular transaction, for purpose of applying for a license, is that right? A. I think that is rather broad, Mr. Connelly.

Q. Well, I am only asking for information, Mr. Mulligan. I wasn't there. Either it was part of your duty or it wasn't, and if it wasn't, I want to find out whose duty it was. A. When applications were made by the Agency, the respective departments took care of that. Now, I had a broad enough general knowledge of the Specie Bank transaction, from the explanation that was given by the inquirer of the nature of the transaction, to state that it is to be a debit or credit to this account, Yokohama, whatever branch it was; and
953 also as to the bank account.

Q. Then I misunderstood your direct testimony, and I am glad to be corrected—that so far as your duties went, it was left to you to determine what would be required, from your knowledge of the transaction and your knowledge of the nature of the transaction, what accounts on your books would have to be debited or credited in connection with carrying out the transaction; and what bank account would be used for payment, is that right? A. Yes. That is on the inquiries.

Q. Right. Now, you know, do you not, Mr. Mul-
954 ligan, that these cable instructions of August 29, 1941, with reference to the payment to be made to the Standard Vacuum, were the first cable instructions to pay money, to pay dollars, received by the New York Agency from the Yokohama office of Yokohama Specie, since July 26, 1941, when the freezing regulations were made applicable to Japan? A. No, I do not.

Q. Do you have any recollection of any other transactions, or any other cable instructions received, prior to August 29, 1941? A. I have no recollection.

955

Q. If it proved to be the fact that these cable instructions were the first received from Japan since the freeze went into effect, would not that transaction stand out in your recollection?

Mr. Bayles: I object, your Honor.

The Court: Sustained as too hypothetical.

Mr. Connelly: I will withdraw it.

956

Q. Do you recall that for a period of time after July 26, 1941,—for some period of time—no cable instructions were received from Yokohama Specie, Yokohama office, to pay dollars in New York? A. I have no recollection.

Q. No recollection at all. That is all.

Redirect examination by Mr. Bayles:

957

Q. Just one further question, Mr. Mulligan: I should like to clarify, if I can, this information which you gave in answer to inquiries. In the course of your conversations with these outsiders or outsider, did you ask the outsider what the general nature of his transaction was? A. No, we never asked.

Q. The general nature, in order to obtain, or in order to know what entries would be made upon the books of the bank, in the event the payment were made? A. The inquirer would explain the transaction to us.

Q. I see. A. And from the explanation given to us by the inquirer, we would determine as to what entries would be made.

Q. Well, when you say "determine," did you know that those entries would be made in the event payment would be made? A. It would be general,

958 in the respect that it was either a debit or credit to that office account, and a debit to the bank account.

Q. I mean, that was in accordance with the general practice of the Agency prior to the freeze?

Mr. Connelly: I object to the form of the question.

The Court: Reframe the question.

Mr. Bayles: I will.

959 Q. Was that information that you gave in answer to the inquiries as to what particular branch office would be debited, first, pursuant to the general knowledge you had of the practice of the Agency prior to the freeze?

Mr. Connelly: I object to the question again, if the Court please. We are dealing with a hypothetical conversation to begin with, and now he is asking, if that hypothetical question was in accordance with his knowledge of the general practice.

960 The Court: Overrule the objection.

A. That's correct.

Q. Now, after the freeze, in answer to any inquiry from an outsider as to what particular bank account would be credited, what answer did you give? A. The Guaranty Trust Company.

Q. That was the general information you gave in each case? A. That's correct.

Q. Did you make an independent determination prior to answering any inquiry, against what particular bank account the check would be drawn? A. We were using Guaranty Trust Company.

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Q. In all cases there? A. In all cases.

Mr. Bayles: No further questions.

Re-cross examination by Mr. Connelly:

Q. Where did you get the information, Mr. Mulligan, that you were using the Guaranty Trust Company in all cases? A. There was some discussion in the office, and in our application that I did file for our operating expenses of the New York Agency, for general expenses, the secretary 962
told me that in all cases we would use the Guaranty Trust account.

Q. Do you recall how long after the freezing regulations went into effect, so far as Japan was concerned, that it was before those instructions were issued? A. Before the freeze?

Q. No; after the freeze. A. Oh, after the freeze? I can't recall definitely just the time after.

Q. You do know, do you not, that the agency maintained accounts with a large number of banks in New York? A. That is correct. 963

Mr. Connelly: That is all.

Mr. Bayles: No further questions, Mr. Mulligan.

964 *Frank Wendt, for Defendant—Direct.*

FRANK WENDT, residing at 194-16, 116th Avenue, St. Albans, Long Island, New York, called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Bayles:

Q. Mr. Wendt, were you employed in the bookkeeping department of the New York Agency of Yokohama Specie Bank prior to its closing? A. I was.

965 Q. For how long a period of time were you employed in that department? A. I don't know exactly; but roughly about 14 or 15 years.

Q. How long were you employed in the New York Agency altogether? A. For 17 years.

Q. Now, in 1941, can you let the Court know, please, the name of the Japanese agent in charge of the bookkeeping department? A. The Japanese agent in charge of the bookkeeping department was Mr. Nakano.

Q. Who was the senior accountant in the bookkeeping department in length of service? A. Mr. Touhey.

966 Q. Was he senior American clerk of the bookkeeping department? A. He was.

Q. Are you familiar in general with the books and records kept by the New York Agency? A. I am.

Q. Now, did the New York Agency maintain a complete set of accounting books? A. They did.

Q. Did these books of the New York Agency reflect the assets and liabilities of New York Agency, or did these books of New York Agency reflect the assets and liabilities of all branches of Yokohama Specie Bank, Ltd.? A. Only the New York Agency.

967

Q. Now, is it correct that one of these books of account kept by the New York Agency was a ledger known as "Inter Office A/C—Their Account." A. That is true.

Q. Is it also correct that in this ledger were listed the various accounts that foreign branches of Yokohama Specie Bank maintained with the New York Agency? A. In this book all the branches of the Yokohama Specie Bank with the New York Agency were maintained.

Q. Now, was one of these particular accounts in this ledger the account of the Yokohama office of the Yokohama Specie Bank? A. That's true. 968

Q. Now, did the Agency also have a ledger called or known as "Current Accounts With Bankers"? A. That's true.

Q. Did that particular ledger include the particular bank accounts which the New York Agency maintained? A. That's right.

Q. I show you this transfer voucher marked in evidence as Defendant's Exhibit O, and ask you if you can advise the Court what entries would be made by the New York Agency upon its books pursuant to that voucher? A. According to this 969 transfer voucher we would debit the account of the Yokohama office, and credit our current account with bankers with Guaranty Trust Company.

Q. Now, the debit that you would make to the Yokohama office, would that be made in the "Inter Office A/C—Their Account"? A. That is right. It would be made in the Yokohama "Inter Office A/C—Their Account."

Q. Now, in connection with the payment of a telegraphic transfer or cable remittance received from Yokohama, those would be the normal entries? A. That's true.

970 Q. When payment was made? A. That's true.

Q. I wonder whether by examination of the Inter Office A/C—Their Account, you could let the Court know what the balance of the Yokohama office was with the New York Agency on August 29th?

Mr. Connelly: Isn't that stipulated, Mr. Bayles?

Mr. Bayles: Yes.

Mr. Connelly: I will object to it as repetitious.

971 The Court: Overrule the objection. He may answer.

A. (Examining ledger) August 29, it has a credit balance of $1,634,744.69.

Q. Well, I wonder if you will examine now the entries on that Inter Office A/C, until the Yokohama office no longer had a credit balance with the New York Agency——

Mr. Bayles: I will put the book in evidence, if there is no objection.

972 Mr. Connelly: I want to object to the question as being wholly immaterial—what they did with the Inter Office accounts between the New York Agency and Yokohama Specie at various times in the future after the transaction here in question, is of no concern to us, and again simply opens up a wholly new field of inquiry, if we have to get into that.

The Court: What is your purpose?

Mr. Bayles: The purpose, your Honor, of my inquiry now is to show that the credit balance which the Yokohama office had

with the New York Agency did not exist after November 17, 1941, and prior to the closing; and that from November 17, 1941, on until the closing, instead of having a credit balance, it was overdrawn with a debit balance—this particular account.

Mr. Connelly: Wholly a matter of internal arrangements between the two offices of the banks, of which the Standard Vacuum has no knowledge, and no interest in. We haven't any explanation, and are not interested in finding out, if you will, the 974
explanation as to why various book entries were made. We have established the only point of significance here—that is, that as of the date when New York Agency received the cable instructions from the Yokohama office, and as of the time those instructions were accepted and advised to Standard Vacuum, there was a credit balance far in excess of the amount of the cable transfer.

Mr. Bayles: May I answer the last statement? First, there has been no proof 975
that these instructions were accepted by the New York Agency during the freeze; and in the second place, if this particular transaction is a transaction under which the New York Agency was directed to pay for the account of the Yokohama office, as ordinary cable instructions, well, then; it is very material, your Honor, to show that Yokohama did not maintain a credit balance with the New York Agency throughout the entire period, until the closing of the bank.

976 *Frank Wendt, for Defendant—Direct.*

The Court: I will take it subject to your objection and motion to strike. Exception to the plaintiff.

Q. (Last question repeated by the stenographer as recorded.) A. The balance became a debit balance on November 17th for $147,678.10.

Q. Was the account of the Yokohama office with the New York Agency overdrawn from that time until the closing? A. It was.

Q. What was the amount of the debit balance
977 as of the date of closing? A. At the time of closing, it was $333,842.02.

Q. Now, you have given, Mr. Wendt, the entries that the Agency would make upon receipt of those transfer vouchers prior to the freeze. Now, what change, if any, occurred after the freeze, in connection with transfer vouchers and the entries? A. Well, the only change was that we had to have a license, and the license number would have to be put on the transfer ticket, and also initialed by the Federal Examiner, before we would make entries.

Q. Before you would make any entries? A. Be-
978 fore we would make any entries.

Q. Are you familiar with this book, for instance —by the way—I withdraw the question for the time being. Will you explain to his Honor if you know what the expression "T. T." means? A. Telegraphic transfer.

Q. Plaintiff's Exhibit No. 12 is headed, "Register of Bills and T. T. Payable." Can you let the Court know, please, whether the book from which that exhibit was taken, contains reference only to cable instructions to make payments? A. Yes, these are only cable instructions to make payments.

979

Q. Those were what you referred to as TT's? A. T. T.'s.

Q. Now, did you observe after the freeze, Mr. Ashwood conferring often with Mr. Nishi? A. The agent and the other sub-agents and per pro. agents, yes. It was a fact that he did confer with Mr. Nishi quite frequently, after the freeze. Practically every day.

Mr. Bayles: No further questions.

Cross examination by Mr. Connelly:

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Q. Mr. Wendt, you were asked on direct examination with reference to an account maintained in the name of Yokohama office of Yokohama Specie, contained in a ledger entitled "Ledger of Inter Office A/C—(Their Account) Japan, July 1, 1941, to (blank)." In 1941, were there any other accounts maintained on the books of New York Agency in the name of Yokohama office of Yokohama Specie? A. Any other books than this?

Q. Any other accounts? A. I don't get your question.

Q. (Question repeated by the stenographer.) 981
A. No. There was not.

Q. So that all transactions of the New York Agency affecting specifically the Yokohama office of Yokohama Specie would be recorded in this ledger (indicating), is that correct? A. Only the dollar transactions.

Q. Only the dollar transactions. What was the practice with reference to Yen transactions? A. Well, we had a Yen account with Yokohama too; only in Yen transactions.

Q. Yes. A. That is called "Inter Office—Our Account."

982 *Frank Wendt, for Defendant—Cross.*

Q. So that you do have or had another account on your books entitled "Inter Office Account, Ours;" is that right? A. Ours. But I am not certain whether they had any balance at that time.

Q. Did I ask anything about the balance? A. No, sir.

Q. That account was set up to reflect yen transactions affecting both the New York Agency and the Yokohama office of Yokohama Specie, is that right? A. That's true.

983 Q. Was that account used to record the transactions carried on in Japan by the Yokohama office, for the account of New York Agency? A. That was used for that purpose, carrying out transactions in Japan for the New York office.

Q. You say that you are not at the present time able to say what the balance in that account was at any time during 1941? A. No.

Q. Now, having those two accounts identified, were there any other accounts maintained on the books of New York Agency reflecting transactions specifically affecting the Yokohama office of Yokohama Specie? A. No.

984 Q. You are satisfied? A. You are sure of that answer now? A. Yes.

Q. All right. Now, this account in the ledger—well, we will call it the ledger for Yokohama office, Their Account, as you will note, contains a substantial credit balance. That I take it is a balance in favor of the Yokohama office, is that correct? A credit balance in this account means a credit balance in favor of the Yokohama office? A. That is in favor of us, a credit balance—oh, excuse me. Yes, that is in favor of the Yokohama office, that is right.

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Q. That contains, as you will note, running through the account, a substantial credit balance through 1941 up until November 17, 1941. Immediately prior to the entries made on November 17, the credit balance was dollars one million, seven six one thousand, seven zero seven point five four, is that correct? A. That's true.

Q. And then on the 17th apparently a number of entries made, approximately fourteen entries, the aggregate of which was sufficient to change the credit balance existing immediately prior thereto to a debit balance? A. That's true.

986

Q. Now, all of those entries made apparently on the 17th of November have opposite them "Cancelled." Then what are these initials here? Is that some individual's initials? A. "B. R." means "bills receivable."

Q. Now, did you have anything to do with the making of those entries on November 17th? A. No, sir.

Q. Do you know anything about the transactions or—withdrawn. Do you know anything about the determination made at that time to make entries reflecting a cancellation of bills receivable?

987

A. No, sir.

Q. Is the term "Bills receivable" as used in the New York Agency of Yokohama Specie in 1941, a sufficiently definite term so that you can identify what was meant by the use of that term? A. Yes.

Q. What was the bills receivable used in that connection? A. Bills receivable were bills received from the other side, which we abbreviated by calling it "B. R." in the books. They were documents.

Q. Documents under which the New York Agency would, if they were honored, have received

988 *Frank Wendt, for Defendant—Cross.*

funds in New York; is that right? A. That's true.

Q. Can you tell anything from the numbers in the left hand corner on the entries under November 17, 1941, as to the date when those bills receivable had first been credited to the Yokohama office account? A. No, sir.

Q. Now, in regular course of business, upon receipt of a bill receivable from the Yokohama office, would not an entry be made in this ledger account crediting that account with the amount?

989 A. That's true.

Q. And in connection with such credit of the account, wasn't the number of the bill receivable recorded, as part of the entry? A. That's right.

Q. Well, then should not those bills receivable, when they were credited to the account, appear in this same ledger at some earlier date? A. They would.

Q. But aside from what might appear in the book here, as to the identification and number, you have no independent information concerning the entries made on November 17th as to the purpose

990 or explanation of it? A. No, sir. I have no other knowledge.

Q. Now, a further series of entries made on December 1, 1941, also bears the same notation, "Cancelled—B. R.", and I take it that that refers to the same type of cancellation to which you have just testified? A. That's true.

Q. Was it normal or customary prior to 1941 for there to be a debit balance in the account maintained on the Agency's books in the name of Yokohama office? A. Yes. It was customary to have a debit balance.

991

Q. Up until what time? A. Well, it fluctuated from time to time, debit to credit, depending upon the transactions.

Q. Was that true over a period of years? A. Over a period of years; I don't know for how long, that debit balance would be maintained, or a credit balance. But it would fluctuate.

Q. The Yokohama office was of course the head office of Yokohama Specie, was it not? A. I believe that is.

Mr. Connelly: That is all.

992

Mr. Bayles: No further questions, Mr. Witness. Except, your Honor, I have sent for the Yen Account Book, so that your Honor may have the complete information as to this Yen debit or credit balance, whatever it may be, and I will let your Honor have it as soon as it arrives—at this time, your Honor, I should like to introduce some of the more formal proof we might have. I understand from Mr. Connelly that there is no objection to the affidavit of Charles Schoch, Deputy Superintendent of Banks.

993

Mr. Connelly: Perhaps I haven't made myself clear. I have expressed a willingness to entertain a stipulation, as I now stipulate, that Mr. Schoch would, if called to the stand as a witness, testify in substance as is set forth in his affidavit here. But I make a very strong objection to its materiality with reference to any relevance to any issue in this suit; and therefore object.

The Court: It may be marked, subject to a motion to strike, with exception to the plaintiff.

994 *Additional Evidence by Defendant.*

(Received in evidence as Defendant's Exhibit X.)

Mr. Bayles: I now offer in evidence affidavit of John Frank Wood, sworn to September 3, 1946, and Exhibit A annexed thereto.

Mr. Connelly: I have made the same stipulation—that if called and permitted to testify, Mr. Wood would testify as set forth in this affidavit. I dislike to keep making
995 objections on the ground of materiality; your Honor has been quite liberal in permitting it, but this is still a different topic, and still farther afield than the earlier ones, and I will have to press the objection.

The Court: I will allow that also; same ruling, with an exception.

(Received in evidence as Defendant's Exhibit Y.)

Mr. Bayles: I offer in evidence photostat of license issued by the Banking Department of the State of New York to Yoko-
996 hama Specie Bank, Ltd., dated November 15, 1940; and a photostat of a license dated November 15, 1941.

Mr. Connelly: No objection.

(Received in evidence as Defendant's Exhibits Z and Z-1, respectively.)

Mr. Bayles: I offer in evidence photostatic copy of letter of the Federal Reserve Bank of New York, dated December 19, 1941, to the Superintendent of Banks.

Mr. Connelly: No objection.

(Received in evidence as Defendant's Exhibit AA.)

Mr. Bayles: I offer in evidence photostatic copy of license issued by the Treasury Department under date of February 9, 1942, to the Superintendent of Banks.

Mr. Connelly: No objection.

(Received in evidence as Defendant's Exhibit BB.)

Mr. Bayles: I also offer in evidence at 998
this time, if your Honor please, photostatic copy of a Supervisory Order No. 27 dated September 28, 1942, issued by the Alien Property Custodian.

Mr. Connelly: No objection.

(Received in evidence as Defendant's Exhibit CC.)

Mr. Bayles: I also offer in evidence a photostatic copy of vesting order No. 915, under date of February 15, 1943, issued by the Alien Property Custodian.

Mr. Connelly: No objection. 999

(Received in evidence as Defendant's Exhibit DD.)

Mr. Bayles: If your Honor please, I offer at this time certificate of Edward Feldman as Special Deputy Superintendent of Banks, pursuant to Section 612 of the Banking Law, acknowledged September 16, 1946.

Mr. Connelly: If I understand correctly the purpose of this offer, it is merely to establish that the books of account, formal

1000 books of account of the New York Agency of Yokohama Specie do not include an account in the name of either the plaintiff in this action or his assignor.

Mr. Bayles: Yes, sir.

Mr. Connelly: For that limited purpose, I have no objection to the offer. The actual language of the affidavit may be a little ambiguous, but if it is limited in that fashion, I have no objection.

1001 (At this point a ten-minute recess was taken.)

Mr. Bayles: The Superintendent offers that certificate only for the limited purpose stated by Mr. Connelly.

(Received in evidence as Defendant's Exhibit EE.)

Mr. Bayles: To complete the record, your Honor, I offer in evidence at this time the Fourth Separate and Complete Defense which I understand your Honor has given
1002 permission to the Superintendent to include in his answer.

Mr. Connelly: No objection.

(Received in evidence as Defendant's Exhibit FF.)

Mr. Bayles: I understand, if your Honor please, that the Superintendent's demands for Bill of Particulars, pursuant to which plaintiff served bill of particulars, would be included as part of the record.

Mr. Connelly: It is my understanding of the law that they become part of the pleadings.

 1003

The Court: They are before the Court. They are not in evidence.

Mr. Bayles: Yes, sir.

Mr. Bayles: I understand that Mr. Connelly has no objejction to having the Court refer to any documents pertaining to Foreign Funds Control issued by the United States Treasury Department, and Executive Orders and regulations relating to transactions in foreign exchange and foreign-owned property, the reporting of 1004
all foreign and foreign-owned property, and related matters; President's Proclamation authorizing and proclaiming list of certain blocked nationals, and regulations relating thereto; general rulings; general licenses and public circulars under the above orders and regulations; and public interpretations and certain press releases relating to the above-mentioned documents —that either side can refer in its brief to any such instruments or documents.

Mr. Connelly: I take it that the Court 1005
may properly take judicial notice of such releases. I do not, of course, concede in any respect the materiality of any of them.

The Court: Suppose you mark those for identification. Then in each of your briefs you may refer to the appropriate pages and sections.

Mr. Bayles: All right. I offer this collection of Regulations and Rulings, and so forth, for identification. I also plan to include any subsequent rulings and regulations issued to this time, last issued, sub-

1006 sequent to June 15, 1945, which are not incorporated in the bound volume here.

Mr. Connelly: I don't see how we can mark for identification something which hasn't yet come down.

Mr. Bayles: It has come down already, but not incorporated in this public volume. They are just loose.

Mr. Connelly: Let us take one thing at a time. Supposing we mark this for identification, and then, if there is some other

1007 ruling or regulation of which the Court can properly take judicial notice, there obviously will be no question.

(Bound Volume marked: Defendant's Exhibit GG for Identification.)

Mr. Bayles: May it please the Court, Mr. Connelly has handed me three carbon copies of letters from Standard Vacuum Oil Company to Foreign Exchange Control, under date of September 3, 1941, September 19, 1941, and December 29, 1941.

1008 I should like to offer these letters in evidence, your Honor, not for the purpose of any of the facts contained in these letters, but simply to show that certain information was supplied to the Federal Reserve Bank or Foreign Exchange Control by Standard in connection with the application for a license.

Mr. Connelly: Objected to solely as immaterial.

The Court: They may be marked for identification. Exception to the defendant.

1009

(Three papers referred to marked: Defendant's Exhibit HHH for Identification.)

Mr. Bayles: At this time, your Honor, I also have the statement of the Yen account which the New York Agency maintained with Yokohama. This particular ledger indicates that on August 29th the New York Agency was indebted to Yokohama for a certain amount of Yen with correlative dollar amount of $23,519.29; and that that indebtedness continued and was increased, 1010
reaching the sum of $101,545.52 on November 12, 1941, and was extinguished as of, under date of December 3, 1941. The last entry here shows no balance on the Yen account in favor of Yokohama.

Mr. Connelly: I will accept counsel's statement with one modification: He characterized it as an indebtedness. Of course he is looking at their books which show charges to the Yokohama office account of exactly the same company. Similarly, with reference to his statement that the indebt- 1011
edness was extinguished, there is an entry closing out the balance in that account December 3, 1941, apparently transferring it to some other account. In accepting counsel's statement, I do not of course concede the materiality in this lawsuit.

The Court: Subject to your objection and exception.

Mr. Bayles: In that same connection, your Honor, I should like the record to note that on November 17th, according to the Inter Office A/C—Their Account, dollar

1012 *Gustav L. Hapke, for Defendant—Recalled —Direct.*

Balance, the Yokohama office was debtor to the extent of $147,678.10. That amount was reduced to $146,604.49 debtor balance as of November 26th; and as of December 1, 1941 the debtor balance of Yokohama branch was increased to $261,386.91. And thereafter increased to the balance of $333,842.02, which Mr. Wendt already testified to.

At this time, your Honor, I should like to recall one of the witnesses for a few
1013 questions. Mr. Hapke, please.

GUSTAV L. HAPKE, previously sworn, was recalled and testified as follows:

Direct examination by Mr. Bayles:

Q. Mr. Hapke, upon receipt of a cable instruction from the Yokohama office, would the New York Agency know whatever transaction occurred in Japan?

1014 Mr. Connelly: Objected to, if the Court please.

The Court: Sustained.

Q. Were you advised in connection with cable remittances or telegraphic transfers from Yokohama to the New York Agency—was any additional information supplied by the Yokohama office, other than that contained in the cables?

Mr. Connelly: I will have to object to the question as too vague and indefinite, unless it is tied down to some specific transaction.

Gustav L. Hapke, for Defendant—Recalled
—Direct.

1015

By the Court:

Q. Was at any time the New York Agency in telephonic communication with Yokohama? A. No, sir.

Q. Were any representatives of the Yokohama office in New York during that period? A. No, sir.

Q. Did you receive any written communications other than those marked here in evidence? A. That is all I received.

1016

Mr. Bayles: I thank your Honor for your questions.

By Mr. Bayles (continuing):

Q. During the freeze, did Mr. Ashwood instruct the Cashier's Department that all outgoing correspondence from the Cashier's Department was to be submitted to him first?

Mr. Connelly: I object to that question as calling for a conclusion.

The Court: Overrule the objection, with exception to you.

1017

A. No. During the freeze I don't remember receiving any instructions.

Q. In that connection? A. In that connection.

Q. Just a few more questions, Mr. Hapke: On August 29, 1941, or at any time thereafter, did you state to anyone connected with Standard Vacuum in a telephone conversation that the New York Agency would pay the $557,000 odd to Standard, New York, if they got a license? A. No; I can truthfully say I didn't.

1018 *Gustav L. Hapke, for Defendant—Recalled —Direct.*

Q. On August 29, 1941 or at any time thereafter, did you state to anyone connected with Standard, New York, that the New York Agency had available, in words or substance, the sum of $557,000 to pay Standard in the event they obtained a license? A. I told Standard, and I put it in writing, that I had instructions to pay them $557,000.

Q. But did you state to Standard in a telephone conversation that the New York Agency had available the sum of $557,000 with which the New
1019 York Agency would make payment to Standard, upon Standard obtaining a license? A. No, I did not.

Q. Did you ever state to any one connected with Standard on August 29th or thereafter, that the New York Agency would make payment of $557,000 to Standard out of an account at the Guaranty Trust Company? A. No, I did not.

Q. When you just testified, Mr. Hapke, as to your telephone conversation with Standard on August 29th——

1020 Mr. Connelly: If the Court please, I am going to object to that. He hasn't testified to a conversation on August 29th. He has testified previously he had no recollection of that conversation.

The Court: Reframe the question.

Q. Did you advise Standard on August 29th in a telephone conversation that someone in the New York Agency had instructed you to make payment to them, if they got a license? A. No; I never told them that anyone had instructed me to pay them.

Q. Thank you.

Gustav L. Hapke, for Defendant—Recalled —Cross.

1021

Cross examination by Mr. Connelly:

Q. Do I understand that answer to be limited to the New York Agency of Yokohama Specie? A. Yes. The New York Agency.

Q. You are not suggesting, Mr. Hapke, that you did not tell somebody at Standard Vacuum Oil Company that you had received instructions from Yokohama Specie, Japan, to pay $557,000? A. I am not suggesting that I didn't say that.

Q. And you are perfectly prepared to admit that you did say that, are you not? A. I said I had instructions to pay the 557 thousand.

1022

Q. Yes. A. Right.

Q. That is what you told Mr. Midtbo at Standard Vacuum Oil Company on August 29, 1941? A. That I had—the same as in the letter—that I had received a cable from Yokohama instructing us to pay them $557,000.

Q. That is all.

Mr. Bayles: No further questions, Mr. Hapke. If your Honor please, I believe that the Superintendent has offered all of the many exhibits that he is prepared to offer; with one request, your Honor, the Superintendent rests. I should like to go over the transcript of this testimony when it is transcribed, and if there is any bit of information or a document which has been inadvertently omitted, I should like to request at a proper time to interpose any such additional proof. It has been a rather voluminous and lengthy case.

1023

The Court: It is a rather unusual request.

1024

Mr. Bayles: Just whenever I obtain the transcript, your Honor.

Mr. Connelly: I am afraid I will have to object to that. We have either got to come to the end of the trial, or we are still on it.

Mr. Bayles: I have requested a transcript.

The Court: Well, I will leave it this way: That if you do find such a contingency that you think needs some elaboration, that I will hear both sides on the question of ad-

1025

mitting that into evidence.

Mr. Bayles: That is the only purpose.

The Court: That would have to be done very promptly. I can't keep the case open.

Mr. Bayles: Yes, your Honor; promptly upon receipt of the transcript.

The Court: Now, there rises a question. The defendant rests?

Mr. Bayles: The defendant rests, your Honor.

Mr. Connelly: In connection with the various items of evidence, both docu-

1026

mentary and testimony, to which plaintiff has objected and which the Court has received subject to a motion to strike, I take it that your Honor would wish to reserve the ruling on the motion to strike until the matters in question have been briefed?

The Court: Yes.

Mr. Connelly: If that be so, then I will make my motion at the present time merely in general form, moving to strike all exhibits and testimony which have been offered thus far received subject to a motion to strike.

1027

The Court: I will reserve decision on that motion. It will be determined at the time of the final submission.

Mr. Connelly: Plaintiff rests.

Mr. Bayles: I also renew my motion made at the close of the plaintiff's case, to dismiss for failure to prove a *prima facie* case, and at this time I also move at the close of the entire case that the plaintiff has failed to prove a cause of action against the Superintendent of Banks. I assume that your Honor would wish me to incorporate those arguments in my memorandum to be submitted to you?

1028

The Court: That is correct. I reserve decision.

Mr. Connelly: The plaintiff moves for judgment in its favor in accordance with the prayers for relief contained in the complaint.

The Court: I reserve decision.

Mr. Connelly: Now, in connection with the submission of briefs——

1029

(Discussion off the record.)

The Court: One week to prepare for what you are to serve on the defendant's Counsel. By that time the record will be ready for you; then you have another week, and then about three days for each side to put in any reply that you wish to, after you each have seen the other's briefs.

Mr. Connelly: Of course it may be when the plaintiff receives the defendant's brief, some additional time may be required because so much of the material, as your

1030

Honor will recall, I have objected to, and I haven't been able to see the materiality of it. It is barely possible some arguments may be made on that basis which may take somewhat longer; but perhaps I can take that up at the time.

The Court: Let us make it three days now. If you find it necessary, I will give you an extension; so that makes it two weeks and three days for the final submission, unless you find you need additional

1031

time. You are to submit proposed findings of fact and conclusions of law at the same time you will submit the brief.

(Proposed findings of fact and Conclusions of Law and briefs to be submitted by October 17, 1946; and all the exhibits at that time.)

1032

Plaintiff's Exhibit 1.

1033

RECEIVED
AUG 28 1941
ANS.
Accounting Dept.

INCOMING CABLEGRAM

EEB
KEC
EJK
AGV

FROM YOKOHAMA PART 1 ANS'D BY CABLE

TO NLT REFINED NEW YORK ANS'D BY LETTER TREAS 1034

DATE AUG. 27/41 WEDNESDAY 65 REC'D 8.10 AM AUG 28
DISTR'D 9.30 AM

OUR 50 PERMIT RECEIVED TAKE UP AUGUST REMITTANCE CONTRACTS TOTALING DOLLAR 537,561.25 WILL REMIT FRIDAY THROUGH YOKOHAMA SPECIE BANK (STOP)

STANDARD VACUUM

1035

1036

Plaintiff's Exhibit 2.

Letter.

1037

(Opposite ☛)

1038

STANDARD-VACUUM OIL COMPANY

JAPAN DIVISION
NO. 8 BUND
YOKOHAMA

No. A 33

File 173A

C. E. MEYER,
GENERAL MANAGER

RECEIVED
OCT 27 1941
ANS
Accounting Dept.

Sept. 8, 1941.

RECEIVED
OCT 28 1941

Standard-Vacuum Oil Company,
ACCOUNTING DEPARTMENT,
New York.

EXCHANGE

Dear Sirs:

We are attaching Forms J-310.A Monthly Report of Exchange Quotations, and J-310.E Summary of Exchange Contracts, for the month of August 1941, covering the Japan Division.

In accordance with the Japan Frozen Asset Law, all exchange contracts outstanding as of July 28th, 1941 were automatically cancelled. In Japan Proper permission was received from the Finance Department to reinstate all contracts maturing during August and the total amount ¥2,378,928.00 - $557,561.24 was remitted by us on Aug. 29th, 1941. The reinstatement of the balance on hand as at Aug. 31st, 1941 is now the subject of negotiations. Dairen have filed application to reinstate all outstanding contracts which amount to ¥600,000.00, but this application will probably be cancelled as they have now received tax assessment of ¥744,091.41 covering Income Taxes on profits earned during the years 1938 and 1939. The payment of these taxes will require Dairen to realize not only on their entire Accounts Receivable but also on practically all remaining stocks in the Territory, and there will be very little, if any, surplus funds available for remittance.

Yours truly,

Chief Accountant.

FEMcC:CU
Encl.(5)
cc: Marketing Dept., N.Y.
With 5 Attachments.

EFL	[illegible]
HFA	TDR
AEL	EVL
HVR	JFG
FVB	[illegible]
[illegible]	[illegible]
AU	[illegible]

MR. [illegible]

PLEASE NOTE AND ~~RETURN~~
APPROVE

A. G. VANDERPOOL

PLAINTIFF'S Ex. 2

1042

Plaintiff's Exhibit 2A.

Monthly Report of Exchange Quotations and Summary of Exchange Contracts.

1043

(Opposite ☛)

1044

J 310.A

MONTHLY REPORT OF EXCHANGE QUOTATIONS

JAPAN/KOREA/FORMOSA STATION YEN CURRENCY MONTH OF AUGUST 1941

Best Actual Quotation for Telegraphic Transfer.

DATE	SPOT		FORWARD				
			LONDON			DIRECT ON NEW YORK	
	LONDON	DIRECT ON NEW YORK	RATE	USANCE - REMARKS		RATE	USANCE - REMARKS
1	1/2	23-7/16					
2	1/2	23-7/16					
3	-	-					
4	1/2	23-7/16					
5	1/2	23-7/16					Flat rate for
6	1/2	23-7/16					6 months.
7	1/2	23-7/16					
8	1/2	23-7/16					
9	1/2	23-7/16					
10	-	-					
11	1/2	23-7/16					
12	1/2	23-7/16					
13	1/2	23-7/16					
14	1/2	23-7/16					
15	1/2	23-7/16					
16	1/2	23-7/16					
17	-	-					
18	1/2	23-7/16					
19	1/2	23-7/16					
20	1/2	23-7/16					
21	1/2	23-7/16					
22	1/2	23-7/16					
23	1/2	23-7/16					
24	-	-					
25	1/2	23-7/16					
26	1/2	23-7/16					
27	1/2	23-7/16					
28	1/2	23-7/16					
29	1/2	23-7/16					
30	1/2	23-7/16					
31	-	-					

PLAINTIFF'S EX. 2A
Page 1

REMITTANCES

DATE	COST LOCAL CURRENCY ¥	TO LONDON RATE	TO LONDON £ STERLING	TO NEW YORK RATE *	TO NEW YORK $		REMARKS
29	2,378,928.00			23-7/16	557,561	25	* If remittance made through London enter London/N.Y. rate
TOTAL ¥	2,378,928.00			23-7/16	557,561	25	

Average Remittance Rate .234375
(Local Curr.- U. S. Dollars)

Average Daily Bank Balance
(Computed on Basis of Working Days)

Comments on Exchange Market:-

YOKOHAMA	¥ 1,627,516.00
KEIJO	2,178.98
FORMOSA	2,714.58

Ex. 2A
Page 1 (REAR)

& Exh. C

J. 810-E

SUMMARY OF EXCHANGE CONTRACTS

MONTH OF AUGUST 1941

STATION JAPAN DIVISION

DATE SETTLED 1941	NO. OF CONT.	USANCE	BANK	AMOUNT OUTSTANDING CLOSE PREVIOUS MONTH U.S. $	PURCHASED DURING MONTH	REMITTED DURING MONTH	BALANCE OUTSTANDING END OF MONTH U.S. $	INITIAL RATE	REMARKS DETAILS OF RATE CHANGES		YEN
2/13	7	T.T.	Sp.	92,847		92,847	-	23-7/16	August	Machine Oil	-
3/20	11	"	Sp.	139,894		139,894	-	23-7/16	August	Illum Oil	-
3/20	12	"	Sp.	187,006		187,006	-	23-7/16	August	Gasoline	-
3/20	13	"	Sp.	137,812		137,812	-	23-7/16	August	"	-
3/27	14	"	Sp.	13,506		557,559	13,506	23-7/16	September	Grease & Pet.	57,628
4/22	15	"	Sp.	13,280			13,280	23-7/16	September	Machine Oil	56,661
4/23	16	"	Sp.	11,018			11,018	23-7/16	September	Illum Oil	47,011
4/23	16	"	Sp.	580			580	23-7/16	November	" "	2,474
4/23	17	"	Sp.	8,554			8,554	23-7/16	September	Gasoline	36,500
5/26	18	"	Sp.	127,815			127,815	23-7/16	November	Illum Oil	545,347
5/26	19	"	Sp.	181,207			181,207	23-7/16	November	Gasoline	773,150
5/29	20	"	Sp.	117,072			117,072	23-7/16	November	Heavy Oil	499,510
5/29	21	"	Sp.	5,125			5,125	23-7/16	November	" "	21,870
6/5	22	"	Sp.	29,520			29,520	23-7/16	September	Grease & Pet	125,956
6/7	23	"	Sp.	8,963			8,963	23-7/16	November	Illum Oil	38,243
6/9	24	"	Sp.	86,822			86,822	23-7/16	September	Machine Oil	370,442
6/9	24	"	Sp.	9,783			9,783	23-7/16	October	" "	41,743
6/21	25	"	Sp.	108,651			108,651	23-7/16	November	Machine Oil	463,581
6/27	26	"	Sp.	56,602			56,602	23-7/16	November	" "	241,506
6/27	27	"	Sp.	632			632	23-7/16	November	Grease & Pet	2,697
7/21	28	"	Sp.	7,433			7,433	23-7/16	December	Gasoline	31,716
				1,344,122		557,559	786,563				¥ 3,356,035
				Add fractions dropped -			2.25				
				Actual Remittance			557,561.25				

EX. 2A
Page 2

TOTAL OUTSTANDING U.S. CURRENCY _____

" " LOCAL CURRENCY _____ AVERAGE RATE _____

S.S.pp. 0

Page 2

J. 310-E

SUMMARY OF EXCHANGE CONTRACTS

MONTH OF AUGUST 1941

STATION JAPAN DIVISION

DATE SETTLED	NO. OF CONT.	USANCE	BANK	AMOUNT OUTSTANDING CLOSE PREVIOUS MONTH U.S. $	PURCHASED DURING MONTH	REMITTED DURING MONTH	BALANCE OUTSTANDING END OF MONTH U.S. $	INITIAL RATE	REMARKS DETAILS OF RATE CHANGES

SUMMARY OF OUTSTANDING BALANCES

September	$ 162,700	¥ 694,198
October	9,783	41,743
November	606,647	2,588,378
December	7,433	31,716
	$ 786,563	¥3,356,035

Illuminating Oil	¥ 633,075
Gasoline	841,366
Heavy Oil	521,380
Machine Oil	1,175,933
Grease & Petrolatum	186,281
	¥ 3,356,035

TOTAL OUTSTANDING U.S. CURRENCY $786.563

" " LOCAL CURRENCY ¥ 3,356,035 AVERAGE RATE 27.4275

EX. 2A
Page 3

350

1048

1049

1050

Plaintiff's Exhibit 3.

Entries to New York Office.

(Opposite ☛)

Form S 167
10. 5. 41. M

M 1322

ENTRIES TO NEW YORK OFFICE

ORIG. Ellis
DUPLICATE Ellis

PREPARED BY H. Shirai
VERIFIED BY H. Asano
ATTESTED MB ACCT. YOKOHAMA STATION Journal SHEET No. 1

59 LIST No.
AUG - 1941 19

DEBITS
~~CREDITS~~

VOU. REF.	PARTICULARS	PACKAGES QUANTITY	PACKAGES KIND SIZE	POUNDS KILOS GALLONS	ACCOUNT AFFECTED	STATION CURRENCY	N. Y. O. USE	U S CURRENCY
	BROUGHT FORWARD							2.44
13	T.T. Remittance to New York office, made through the Yokohama Specie Bank, Ltd, Yokohama, on Aug. 29. 1941 @Ex. 23 7/16					¥2378928.00	10	$557561.25
14	Amount of Sales of non-draft Gasoline made to American President Lines during last 2 months from July to Aug. 1941, transf'd to New York office for collection. Retailed statement of account in duplicate attached to our letter No. A29 of 9/3/41 sent to New York office					Deducted from total		
	Socony Motor Gasoline A delivered from Yokohama July 27 45 gals ¥41.40 @Ex. 2344 us$ 9.70 Aug. 31 95 " ¥87.40 " 20.49				American Pres. Lines	Charged to Acct Rec 2400 Aug 31 in Yen ¥129.80 to be collected from Agents of the Line		
16	Loss on scrap tinplates sold from Storehouse				P. & L. Ac	1405	42.49-15 6	3.29
17	Cost of 4 sheets Glass used for repairs to Tatebayashi godown office damaged by typhoon				Insce Reserve Fire, flood, etc	132	42.1-5-60 9	.31
19	Cartage on 40 Empty gasoline drums tonight back from customer				55 Gal. Gasoline 18 Gauge drums	1720	4200-66 1	4.03
32	Lighter's demurrage incurred in landing 1601 bbls Lub. Oil ex M/S "Nagara Maru" arrived at Osaka on July 5. 1941.				Lub. Oil	5270	4201-25 1	12.35
34	Pilotage and towage in shifting M/S "Akebono Maru" R.S.P. Co/S.V.O. Co wharf at Tsurumi in connection with transportation of Gasoline borrowed from R.S.P. Co. on July 25. 1941				Gasoline	1580	42.11-75 1	41.86
35	Taxi hired by Customs officials re discharge of above borrowed Gasoline				"	1100		
37	Returns from Station use - Stock debit			72 Kilos	"	980		
40	Supplementary Insurance Plan 4/c. for the month of August 1941 as per S-40 in envelope attached					76592	42.18 6	179.53
	CARRIED FORWARD			72 Kilos		¥2380865.92		$557832.81

PLAINTIFF'S EX. 3
Page 1

Form S 167
10. 5. 41. M

M 1322

ORIG New
(FEDEX) Final

ENTRIES TO NEW YORK OFFICE

PREPARED BY O. Ohno
VERIFIED BY T. Hyodo
ATTESTED [illegible] ACCT. YOKOHAMA STATION Journal SHEET No. 2

59 LIST No.
AUG 31 1941 19
DEBITS
~~CREDITS~~

Ex. 3 Page 2

VOU. REF.	PARTICULARS	PACKAGES QUANTITY	PACKAGES KIND SIZE	POUNDS KILOS GALLONS	ACCOUNT AFFECTED	STATION CURRENCY	N. Y. O. USF		U. S. CURRENCY
	BROUGHT FORWARD	-		72	Liters	¥ 2,380,865.9			557 832 81
50	Special empty packages bought back from customers during August, 1941:								
	Stock debit	48	Drums		55 Gal. Refined	144000	42 00-57		337 54 M
		113	"		18 Gauge Drums	222400	66	1	521 31 M
		25	55/9 Drums N.Y.		Gasoline Light Kegs	75000	66		175 80 M
51	Allowances for leakage on shipments to customers:								
	CONSIDER AS LEAKAGE								
	Paint 66.6 litres		D A		Std White	1118	42C 3-01		2 62
	Standerol 1,080. "				Standerol	11922	11		27 95
	Gasoline 378.8 "				Gasoline	7775	05	1	18 22
	Lub. Oil 2.5 gals				Lub. Oil	905	2.5		2 12
56	Empty packages returned from Station use during August, 1941 - Stock debit	2	1/5 Tins		Empty T+B.	136	42.00-49	1	32
57	Cost of non-draft Gasoline supplied for acct of Mr. C. E. Meyer during August, 1941: 170 litres S. R. Gasoline "A"				C. E. Meyer Personal A/c	3555	Trans 11167	V	833
64	Oil transferred from Storehouse acct to Stock acct - Stock debit	2	Tins	2.5	Gal. Lub. Oil	728	42 31-25	1	1 71
68	Empty packages returned from Station use during August, 1941 - Dock debit	4	5/9 Drums		Empty Kgs Pkgs	3200	42 00-76		7 50
		5	1/5 Tins		Empty T+B.	365	" 49	1	86
69	Additions to Plant Investment as per S-150 A, sheet No. 1, final, of August, 1941 sent to New York office:								
	Yokohama territory ¥ 158.00 U.S.$ 974.53								
	Dairen " 1,198.60 283.60								
	Formosa " 28.00 6.56								
	Total					538460	44 6	10	1264 69
75	Land Transfer Registration a/c for the month of August, 1941, transferred as approved in New York's letter No. 1791 of March 18, 1937, details as per Statement attached					15838	42 00	6	37 12
80	Price adjustment on transaction of Alcohol mixed with gasoline during August, 1941				Gasoline (Alcohol)	79800	[illegible]		18 [illegible]
	CARRIED FORWARD	199		72 Liters 2.5 Gals	¥ 2.391	13861			560 -25 95

Form S 167
10. 5.-41. M

M 1322

ENTRIES TO NEW YORK OFFICE

PREPARED BY J. Ishino
VERIFIED BY T. Kodaira
ATTESTED [illegible] ACCT.

YOKOHAMA STATION Journal SHEET No. 3

99 LIST No.

AUG 31 1941

ORIG. CHECKED

DEBITS ~~CREDITS~~

Ex. 3 Page 3

VOU. REF.	PARTICULARS	PACKAGES. QUANTITY	PACKAGES. KIND SIZE	POUNDS KILOS GALLONS	ACCOUNT AFFECTED	STATION CURRENCY.	N. Y. O. USE	U. S. CURRENCY 2344
	BROUGHT FORWARD	199		72 2.5	Liters Sale	¥ 2391 13861		560 425 95
81.	Transhipping expense covered on Sales during August, 1941: COVERED IN REALIZATIONS				Std White	480555	4201-01	112642.1
					Petrolite	1934	02	453
					Gasoline	7322 96	05	1716 50.1
					Black Oils, ~~Standard~~ Industrial	40745	18	9551
					Lub. Oil	11027	25	25837
					Grease	4080	35	956
"	Transhipping expense covered on Leakage and shortage during August, 1941: CONSIDER AS LEAKAGE				Std White	1908	4202-01	447
					Gasoline	12182	05	2855
					Standesol	334	11	78
					Lub. Oil	09	25	02
82.	Gasoline Consumption Tax covered on Sales during August, 1941 COVERED IN REALIZATIONS				Gasoline	5705313	4201-05	1337325.1
"	Gasoline Consumption Tax covered on Leakage during August, 1941 CONSIDER AS LEAKAGE				"	151031	4203-05	35402
83.	Duty covered on Sales during August, 1941: COVERED IN REALIZATIONS				Std White	299472	4201-01	70196.3.1
					Petrolite	10191 5	02	2388 9
					Gasoline	7673522	05	179867 4.1
					Black Oils, ~~Standesol~~ Industrial	17610 0	18	41278
					Lub. Oil	847308 2	25	198609 0.1
					Grease	72886 3	35	17085 0.1
"	Duty covered on Leakage and Shortage during August, 1941: CONSIDER AS LEAKAGE				Std White	9788	4201-01	2294
					Petrolite	249	02	58
					Gasoline	205519	05	4817 3
					Lub. Oil	94044	25	22044
					Grease	5486	35	1285
					Spltty Prods	319	45	75
	CARRIED FORWARD	199		72 2.5	Liters Sale	¥ 2668 13161		625 353 09

Form S 167
10. 5. 41. M

ENTRIES TO NEW YORK OFFICE

M 322

PREPARED BY [illegible]
VERIFIED BY [illegible]
ATTESTED [illegible] ACCT. YOKOHAMA STATION Journal SHEET No. 4

59 LIST No.
AUG 31 1941
CHECKED
DEBITS ~~CREDITS~~

Ex. 3 Page 4

VOU. REF.	PARTICULARS	PACKAGES QUANTITY	PACKAGES KIND SIZE	POUNDS KILOS GALLONS	ACCOUNT AFFECTED	STATION CURRENCY	N. Y. O. USE	U. S. CURRENCY
	BROUGHT FORWARD	199		72 2.5 Tons	Future Sales	¥ 2,668 13 16		625 35 23 44
89	The following storehouse materials lost by flood at Mito, written off:							
	4720 pcs Tin caps, Tiger ¥ 21.30							
	1695 " " " , Pine 9.61							
	13 lbs Charcoal 94							
	5 gals Eg. Mobiloil BB 15.55				Imperial Reserve A/c Fire, flood, etc.			
	4 " " " C 11.87							
105	Carrying a/c for the month of August, 1941, closed out as per S-169 sent to New York:					5927 42 45 60	9 X	13 89
	Debit Transfers issued							
	against Keijo, Formosa & Dairen Stations ¥ 38,677.85 $ 9,067.27							
	less Debit Transfer recd from Formosa 31.00 7.26							
	Balance transferred					38 64 68 5 44 16 5	10 X	9 06 00 1
	Credit Transfers issued & received — Nil							
101	Can and Box Mfg a/c for the month of August, 1941, closed out as follows:							
	Total ordinary Tins made	25312	1/5 Tins		Empty T. & B.	14 75 76 77	¥ 260-49 1 X	3 46 44 15
	Filling charge on 10 - 1/5 Lub. oil tins				"			18
	Packing charge on 2 - 2/5 boxes				"	26	" 50 1 X	06
106	Labor for putting our Mito plant in order after the flood				Imperial Reserve A/c Fire, flood, etc.	400	4 [illegible] 60 9 X	94
107	Expense distribution a/c for the month of August, 1941, closed out as follows:							
	Group No. 1					163 77 34 7	¥ 10 16 X	38 38 8 50
	" No. 2					57 84 70 0		13 55 9 34
	CARRIED FORWARD	25511		72 2.5 Tons	Future Sales	¥ 2,943 22 08 7		689 84 0 16

Form S 167
10. 5. 41. M

ENTRIES TO NEW YORK OFFICE

M 1322

ORIG CHECKED

PREPARED BY
VERIFIED BY
ATTESTED ACCT. STATION YOKOHAMA SHEET No. 5. Final LIST No. 9 AUG 31 1941

DEBITS ~~CREDITS~~

VOU. REF.	PARTICULARS	PACKAGES QUANTITY	PACKAGES KIND SIZE	POUNDS KILOS GALLONS	ACCOUNT AFFECTED	STATION CURRENCY	N. Y. O. USE	U. S. CURRENCY
	BROUGHT FORWARD Journal total	25511		72 25.	Liters Sales	¥ 2943205		689 840 16
				Less Rec'd on Page 1		378980		55 1561 25
						¥64 9287		1 34 1891

Summary of Stock Debit

Prods.	Pkgs.		Liters	Gals.	
Gasoline			72		✓
Lubricating Oil	2	TINS		2.5	✓
Empty Tins & Boxes	25319	1/5 TIN			✓
55 Gal. Refined 18 Gauge Drums	48	DRUMS			✓
" Gasoline " "	113	"			✓
Gasoline Special Packages	25	5/5 M.Y. DRUM			✓
Lubric " "	4	5/5 DRUM			✓
Total	25511		72	2.5	

CHECKED WITH STOCKS.

Summary

D/T 204 586 86
C/T 13 842 70
18 563 44

Ex. 3 Page 5

Less Rec'd on Page 1 ¥64 9287 1 34 1891

Summary of Stock Debit

Prods.	Pkgs.		Liters	Gals.	
Gasoline			72		✓
Lubricating Oil	2	TINS		2.5	✓
Empty Tins & Boxes	25319	1/5 TIN			✓
55 Gal. Refined 18 Gauge Drums	48	DRUMS			✓
" Gasoline " "	113	"			✓
Gasoline Special Packages	25	5/5 M.Y. DRUM			✓
Lubric " "	4	5/5 DRUM			✓
Total	25511		72	2.5	

CHECKED WITH STOCKS.

Summary

D/T 204 586 86
C/T 13 842 70
18 563 44

Ex. 3 Page 5

Cash Receipt
Exchange, Stamps, Etc. P. & L. 4c ¥ ¥ 8 H249-11 6 ✓ .20

Exhibit 3
Page 5.

CARRIED FORWARD

1054

Plaintiff's Exhibit 4.

General Ledger Trial Balance of Standard at Yokohama as of July 31, 1941 and Statement of Cash Account.

1055

(Opposite ☛)

1056

FORM S.29

(FOR STATION USE ONLY)
PREPARED BY
VERIFIED
ATTESTED
APPROVED ATTY.

YOKOHAMA STATION — MONTH ENDING July 31, 1941.

NEW YORK OFFICE ACCOUNT CURRENT		DR.	CR.
CASH PAYMENTS.		3,583,971.16	
CASH DISCOUNT, EXCHANGE, STAMPS, ETC.		2.61	
JORNAL.		1,440,441.42	
BALANCE AT END OF MONTH.		6,649,667.02	
BALANCE, FIRST OF MONTH.			7,912,573.26
CASH.			1,599.79
JOURNAL.			748,837.70
SALES, REFINED.	¥1,993,048.61		3,011,071.48
TOTAL		¥11,674,082.21	¥11,674,082.21

GENERAL LEDGER TRIAL BALANCE

FOLIO	ACCOUNT		STATION CURRENCY DR.	STATION CURRENCY CR.
1.	New York Office A/c.			6,649,667.02
2.	Service Station Equipment A/c.	U.S.$174,278.55	398,211.44	
3.	" " " Depreciation Reserve A/c.	U.S.$154,788.71		354,106.19
5.	Appropriation Ledger A/c. YOKOHAMA TERRITORY:	U.S.$ 1,503.82	6,264.33	
	DAIREN "	U.S.$ 283.60	1,198.60	
7.	Shares of Standard Senpaku K.K.A/c.	$ 40,866.77	82,759.76	
8.	" " Vacuum Oil Co.Japan,Ltd."	$ 12,450.00	25,000.00	
9.	Standard Senpaku K.K.A/c.	U.S.$ 2,825.44	6,656.37	
10.	Vacuum Oil Co.Japan,Ltd.Loan A/c.	$ 76,404.35	160,232.45	
11.	International Bitumen Emulsions Corporation A/c.			112,659.48
18.	Security Guarantee Deposits A/c.F.V.¥530,422.51		507,508.51	
21.	Securities & Cash Guarantee Deposits A/c.			2,106,245.93
24.	Cash Account		1,758,591.18	
26.	Petty Cash Funds A/c.		33,645.00	
29.	Cash on Call A/c.		2,000,000.00	
30.	Advanced Traveling Expense Funds A/c.		3,235.00	
31.	Sales Ledger A/c.No.1. Debit Bal.	¥1,203,334.48		
	Credit "	1,774.71	1,201,559.77	
32.	" " " No.2. Debit "	¥ 847,137.45		
	Credit "	8,633.64	838,503.81	
33.	" " " No.3. Debit "	¥1,094,332.18		
	Credit "	10,221.43	1,084,110.75	
34.	" " " No.4. Debit "	¥ 761,525.86		
	Credit "	1,793.32	759,732.54	
38.	Collection A/c Sub-Stations.		16,143.15	
39.	Drum Loan A/c.			352,760.00
42.	Claims Account		545.44	
47.	Payments A/c of Employees A/c.			2.49

Dr 390629.97
Cr 2242.10

33.	" " " No.3.	Debit "	¥1,094,332.18			
		Credit "	10,221.43	1,084,110.75		
34.	" " " No.4.	Debit "	¥ 761,525.86			
		Credit "	1,793.32	759,732.54		
38.	Collection A/c Sub-Stations.			16,143.15		
39.	Drum Loan A/c.				352,760.00	
42.	Claims Account			545.44		
47.	Payments A/c of Employees A/c.				2.49	
53.	Sundry A/c Receivable A/c. Debit balance only			23,715.55		
65.	M/V "PAN GOTHIA" A/c.				58.06	
74.	Fixed Deposits A/c.			145,607.93		
77.	Advance Traveling Expense A/c.			758.66		
80.	Special Cash Advance A/c.			4,900.00		
83.	Provisional Duty & Consumption Tax A/c.			24,930.92		
86.	Separation Reserve Fund Deposits A/c.			18,818.51		
89.	Tax Refund Receivable A/c.			8,276.89		
91.	Employees Bonds A/c.			11,770.00		
93.	Freight Refund Receivable A/c.			662.40		
100.	Accounts Payable A/c.				58,642.35	
101.	Refined Oil Allowance A/c.				2,733.33	
102.	Gasoline Allowance A/c.				1,885.29	
104.	Lubricating Oil Products Allowance A/c.				4,155.46	
106.	Tsurumi Rinko Railway Freight A/c.				9,097.21	
107.	Shibusawa Soko K.K.A/c.				143.46	
110.	Transhipping Payable A/c.				10,150.63	
112.	Payroll A/c.				45,311.86	
114.	Japanese Day-Laborers Irokin A/c.				85,342.21	
115.	Separation Allowance A/c.				39,202.91	
116.	Provident Fund A/c.				254.69	
119.	Japanese Health Insurance A/c.				986.34	
120.	Supplementary Insurance Plan A/c.				327.25	
124.	Employees Bonds Payable A/c.				11,770.00	
125.	Contribution to Nippon Kaiun Hokokudan A/c.				23.00	
126.	Income Tax Collection A/c.				2,503.07	
136.	Storehouse A/c.	U.S.$	47,674.67	194,513.60		
140.	Can Manufacturing Supplies A/c.	U.S.$	74,883.38	319,342.60		
143.	Duty Account	U.S.$	77,440.47	330,377.43		
145.	Gasoline Consumption Tax A/c.	U.S.$	18,711.76	79,828.32		
147.	Transhipping Expense A/c.	U.S.$	3,748.28	15,991.09		
148.	Borrowed & Loaned Oil A/c.	U.S.$	49,048.72		209,264.57	
152.	Floating Equipment Operation A/c.			1,419.56		
154.	Sales of Scrap A/c.				756.11	
156.	Interest Account				11,027.22	
159.	Expenses Applicable to Surplus Property Available for Sale A/c.	$	1,272.12		5,427.12	
162.	Landing Charges A/c.			6,313.02		
187.	Carrying A/c.			3,378.67		
	TOTAL			¥10,074,503.25	¥10,074,503.25	

PLAINTIFF'S EX. 4
Page 1

What was closing T. T. rate of Exchange, on London 1/2 on New York 23-7/16

Are all Sales and Doubtful Account Ledgers in Balance, Yes if not, write us when balanced

Give date on which you finished Mailing this Month's Statements to Customers Aug. 23, 1941.

1066

Plaintiff's Exhibit 6.

THE YOKOHAMA SPECIE BANK, LIMITED

Yokohama, October 1st, 1941.

Messrs. Standard Vacuum Oil Co.,
Yokohama.

Dear Sirs,

We hereby certify that according to our books,
1067 the balance standing to the credit of your current account amounted to ¥ 684,063.40 (Say Yen Six hundred eighty four thousand and sixty three and Sen forty.) at the close of business on the 30th September, 1941.

Yours faithfully,

THE YOKOHAMA SPECIE BANK, LTD.,

YASUYOSHI SAITOH,
P.P. Manager.

1068

Plaintiff's Exhibit 6A.

(Opposite ☛)

(P.357)

MONTHLY RECONCILIATION OF BANK BALANCE

(STATION USE ONLY)
PREPARED BY
VERIFIED
ATTESTED ASST.
APPROVED ATTY.

FORM B 24
8.4.38.0

YOKOHAMA, JAPAN STATION SEPTEMBER 1941 193-

Cash Balance First of Month,		862,549.97
Total Cash Receipts,		7,016,399.10
	TOTAL,	7,878,949.07
Total Cash Payments,		5,425,584.30
Cash Balance as per Cash Sheets,		2,453,364.77
Less Cash Entered, but not deposited,		-
	BALANCE,	2,453,364.77
Add Checks Outstanding,		1,211.82
	TOTAL,	2,454,576.59
Bank Balance as per Pass Book,		2,452,188.72
Difference, if any, fully explained under Remarks,	x	2,387.87

CHECKS OUTSTANDING
(LIST CHECKS OF EACH BANK SEPARATELY)

No.	S141 Folio	AMOUNT	No.	AMOUNT
Dai Ichi Ginko, Ltd.				
23927	16	456.22		
Sumitomo Bank, Ltd.				
19550	17	755.60		
		1,211.82		

RECEIPTS AND DEPOSITS

Total Cash Receipts for Month,		7,016,399.10
Add Receipts Previous Month deposited this Month,		-
		7,016,399.10
Deduct Receipts this Month deposited next Month,		-
		7,016,399.10
Total Deposits for Month, per Bank Pass Book,		7,015,924.70
Difference, if any, fully explained under Remarks,	xx	474.40
List here Names of Banks and Bal. in each, per Pass Book :		
National City Bank of New York		-
Dai Ichi Ginko, Ltd.		881,406.18
Mitsui Bank, Ltd.		580,068.07
Sumitomo Bank, Ltd.		229,968.56
Yokohama Koshin Bank, Ltd.		6,554.43
Yokohama Specie Bank, Ltd.		684,063.40
REMARKS: Yasuda Bank, Ltd.		69,640.03
P.O.Transfer Bureau		488.05
		2,452,188.72

		7,016,399.10
Total Deposits for Month, per Bank Pass Book,		7,015,924.70
Difference, if any, fully explained under Remarks,	xx	474.40
List here Names of Banks and Bal. in each, per Pass Book :		
National City Bank of New York		-
Dai Ichi Ginko, Ltd.		881,406.18
Mitsui Bank, Ltd.		580,068.07
Sumitomo Bank, Ltd.		229,968.56
Yokohama Koshin Bank, Ltd.		6,554.43
Yokohama Specie Bank, Ltd.		684,063.40
Yasuda Bank, Ltd.		69,640.03
P.O.Transfer Bureau		488.05
		2,452,188.72

Cash Disbursement as per Bank pass book & List

National City Bank of New York	54,745.21
Dai Ichi Ginko, Ltd.	1,265,809.07
Mitsui Bank, Ltd.	419,059.84
Sumitomo Bank, Ltd.	1,010,122.40
Yokohama Koshin Bank, Ltd.	99,697.51
Yokohama Specie Bank, Ltd.	2,000,528.91
Yasuda Bank, Ltd.	552,000.00
P.O.Transfer Bureau	31,100.00
	5,433,062.94
Less, Outstanding checks for Aug't.	8,690.46
	5,424,372.48
Add, Outstanding checks for Sept. as per S-154	1,211.82
	5,425,584.30

Deposits as per Bank Pass Books & List

National City Bank of New York	-
Dai Ichi Ginko, Ltd.	2,015,426.56
Mitsui Bank, Ltd.	830,811.18
Sumitomo Bank, Ltd.	1,111,059.35
Yokohama Koshin Bank, Ltd.	104,212.14
Yokohama Specie Bank, Ltd.	2,337,461.47
Yasuda Bank, Ltd.	615,825.09
P.O.Transfer Bureau	1,128.91
	7,015,924.70

PLAINTIFF'S EX. 6A

TOTAL

Yokohama Station, July 31st, 1941.

CASH ACCOUNT

The National City Bank of New York		¥54,745.21
The Dai Ichi Ginko, Ltd.	¥86,624.33	
Less Checks Outstanding	1,655.50	84,968.83
The Mitsui Bank, Ltd.		19,192.41
The Sumitomo Bank, Ltd.	179,935.58	
Less Checks Outstanding	2,190.38	177,745.20
The Yokohama Koshin Bank, Ltd.		9,150.44
The Yokohama Specie Bank, Ltd.	1,373,409.05	
Add Checks deposited, but not credited by the Bank in this month.	4,810.01	1,378,219.06
The Yasuda Bank, Ltd.		5,814.94
P. O. Transfer Bureau		28,755.09
		¥1,758,591.18

CASH ON CALL ACCOUNT

The Yokohama Specie Bank, Ltd.	¥2,000,000.00

COMPILED BY

CHECKED BY

1072 **Plaintiff's Exhibit 7.**

THE YOKOHAMA SPECIE BANK, LIMITED
NEW YORK AGENCY
Equitable Building

New York, August 29th, 1941.

Standard Vacuum Oil Company
10 Broadway
New York City
New York.

Att: Mr. Mitbo:

1073 Gentlemen:

Referring to our telephone conversation of today, we wish to advise you that we have received telegraphic instructions from our Yokohama Office to pay you the sum of $557,561.25.

We understand that you are filing an application with The Treasury Department of the U.S.A. for a License in order to permit us to make this payment to you.

Awating your reply regarding this matter, we remain

1074 Yours very truly,

THE YOKOHAMA SPECIE BANK, Ltd.

S. ARAKI
p.p. Agent

Plaintiff's Exhibit 8.

Proof of Claim.

(Opposite ☛)

1060

Plaintiff's Exhibit 5.

1

1061 *(Opposite ☛)*

1062

2.40 N

(FOR STATION USE ONLY)

FORM S 25

PREPARED BY

VERIFIED BY

ATTESTED

APPROVED ATTY.

YOKOHAMA STATION MONTH ENDING August 31st, 1941.

NEW YORK OFFICE ACCOUNT CURRENT		DR.	CR.
CASH PAYMENTS,		32,917.12	
CASH DISCOUNT, EXCHANGE, STAMPS, ETC.		.84	
JORNAL,		2,943,220.87	
BALANCE AT END OF MONTH,		5,585,146.71	
BALANCE, FIRST OF MONTH,			6,649,667.02
CASH,			.02
JOURNAL,			36,255.48
SALES, REFINED.	¥587,355.09		1,875,363.02
TOTAL		¥8,561,285.54	¥8,561,285.54

GENERAL LEDGER TRIAL BALANCE

FOLIO	ACCOUNT			STATION CURRENCY DR.	STATION CURRENCY CR.
1.	New York Office A/c.				5,585,146.71
2.	Service Station Equipment A/c.	U.S.$174,278.55		398,211.44	
3.	" " "				
3-3	Depreciation Reserve A/c.	U.S.$154,788.71			354,106.19
5.	Appropriation Ledger A/c.				
	YOKOHAMA TERRITORY:	U.S.$ 1,517.32		6,321.93	
	DAIREN, KEIJO & FORMOSA:		NIL		
7.	Shares of Standard Senpaku K.K.A/c.	$ 40,866.77		82,759.76	
8.	" " Vacuum Oil Co.Japan,Ltd."	$ 12,450.00		25,000.00	
9.	Standard Senpaku K.K.A/c.	U.S.$ 2,711.41		6,595.03	
10.	Vacuum Oil Co.Japan,Ltd.Loan A/c.	$ 76,404.35		160,232.45	
11.	International Bitumen Emulsions Corporation A/c.				112,659.48
18.	Security Guarantee Deposits A/c	F.V.¥530,422.51		507,508.51	
21.	Securities & Cash Guarantee Deposits A/c.				2,106,245.93
24.	Cash Account			862,549.97	
26.	Petty Cash Funds A/c.			33,645.00	
29.	Cash on Call A/c.			700,000.00	
30.	Advanced Traveling Expense Funds A/c.			3,235.00	
31.	Sales Ledger A/c.No.1.	Debit Bal.	¥1,437,116.90		
		Credit "	2,826.69	1,434,290.21	
32.	" " " No.2.	Debit "	1,577,788.40		
		Credit "	4,025.17	1,573,763.23	
33.	" " " No.3.	Debit "	1,394,755.78		
		Credit "	8,196.40	1,386,559.38	
34.	" " " No.4.	Debit "	791,004.68		
		Credit "	1,907.03	789,097.65	
38.	Collection A/c Sub-Stations.			93,728.01	
39.	Drum Loan A/c.				348,950.00
42.	Claims Account			475.44	
47.	Payments A/c of Employees A/c.			7,055.68	
54.	Sundry A/c Receivable A/c. Debit balance only			27,617.34	
74.	Fixed Deposits A/c.			145,607.93	
77.	Advance Traveling Expense A/c.				518.11
80.	Special Cash Advance A/c.			4,900.00	
83.	Provisional Duty & Consumption Tax A/c.			25,053.10	
86.	Separation Reserve Fund Deposits A/c.			18,818.51	
89.	Tax Refund Receivable A/c.			8,233.97	
91.	Employees Bonds A/c.			11,770.00	
100.	Accounts Payable A/c.				104,550.67
104.	Lubricating Oil Products Allowance A/c.				4,157.36
106.	Tsurumi Rinko Railway Freight A/c.				10,972.07
107.	Shibusawa Soko K.K.A/c.				255.58
112.	Payroll Account				13,192.88
114.	Japanese Day-Laborers Irokin A/c.				85,372.21
115.	Separation Allowance A/c.				39,829.79
116.	Provident Fund A/c.				470.67
119.	Japanese Health Insurance A/c.				69.87
120.	Supplementary Insurance Plan A/c.				765.92
124.	Employees Bonds Payable A/c.				11,770.00
125.	Contribution to Nippon Kaiun Hokokudan A/c.				46.00
126.	Income Tax Collection A/c.				4,162.00
136.	Storehouse A/c.	U.S.$	48,790.08	199,425.03	
140.	Can Manufacturing Supplies A/c.	U.S.$	71,681.73	305,688.72	
143.	Duty Account	U.S.$	35,645.38	152,070.65	
145.	Gasoline Consumption Tax A/c.	U.S.$	5,829.75	24,870.92	
147.	Transhipping Expense A/c.	U.S.$	1,283.81	5,477.05	
148.	Borrowed and Loaned Oil A/c.	U.S.$	49,048.72		209,264.57
152.	Floating Equipment Operation A/c.			1,898.27	
154.	Sales of Scrap A/c.				756.11
156.	Interest Account				14,474.82
159.	Expenses Applicable to Surplus Property Available for Sale A/c.	$	1,271.91		5,426.21
162.	Landing Charges A/c.			9,772.62	
177.	Can & Box Manufacturing A/c	U.S.$	218.88	930.35	
	TOTAL			¥9,013,163.15	¥9,013,163.15

PLAINTIFF'S EX. 5
Page 1

What was closing T. T. rate of Exchange, on London 1/2 on New York 23-7/16

Are all Sales and Doubtful Account Ledgers in Balance: Yes if not, write us when balanced

Give date on which you finished Mailing this Month's Statements to Customers. Sept.19,1941.

Not Write in this Space

RECEIVED NOV 21 1942

ENTERED

POSTED P. 159 - 6

ACC. POSTED P. 1

REJ. POSTED P. 159 - 6

REG. 119

PREF. POSTED

(Read instructions on reverse side carefully before filling out this proof of claim)

PROOF OF CLAIM

Claim No. 1891

In the Matter of
The Liquidation of the Business and Property
in New York of
THE YOKOHAMA SPECIE BANK, LTD.

Rejected
FEB 11 1943
Superintendent of Banks
of the State of New York
by _____

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

E. T. SINGER, being duly sworn deposes and says:

To be filled in only if applicable

That he is a Vice-President and the Treasurer
~~Partner—Officer—Duly Authorized Attorney—Agent~~
of Standard-Vacuum Oil Company, a Delaware corporation
~~Partnership—Corporation—Duly Authorized~~
That claimant ~~is a partnership of~~

That The Yokohama Specie Bank, Ltd., is justly and truly indebted to Standard-Vacuum Oil Company of 26 Broadway, New York City, New York,
Print Full Name and Mailing Address of Claimant

in the sum of ~~$557,561.25~~ said claim being based upon the following facts:—

	Amount	
[See EXHIBIT A attached hereto and made a part hereof]		

That evidence of said claim is attached hereto and made a part hereof. [Exhibits B, C, D, E and F]

That the amount of said claim is now justly due and owing to the said claimant; that no part thereof has been paid or assigned; that claimant holds no security therefor; that there are no offsets or counterclaims thereto and that claimant is not indebted, directly or indirectly, to The Yokohama Specie Bank, Ltd., except as follows:

NONE

(If none, so state. Otherwise, give brief, clear description of exception.)

	Amount	
and made a part hereof]		

That evidence of said claim is attached hereto and made a part hereof. [Exhibits B, C, D, E and F]

That the amount of said claim is now justly due and owing to the said claimant; that no part thereof has been paid or assigned; that claimant holds no security therefor; that there are no offsets or counterclaims thereto and that claimant is not indebted, directly or indirectly, to The Yokohama Specie Bank, Ltd., except as follows:

NONE

(If none, so state. Otherwise, give brief, clear description of exception.)

That claimant (does) ~~(does not)~~ demand(s) priority of payment.

[See EXHIBIT G attached hereto and made a part hereof]

(If priority is demanded state briefly the grounds therefor.)

That claimant is NOT a national of a BLOCKED COUNTRY within the meaning of Executive Order 8389 as amended and regulations and general rulings issued thereunder, and is not an agent of or acting for or on behalf of any such national.

(If claimant is such a national, or is an agent of or acting for or on behalf of such a national, cross out the word "NOT" and give details below. See Instruction No. 8)

Claimant is NOT a national of a BLOCKED COUNTRY

Subscribed and Sworn to before me

this 20th day of November, 1942

NOTARY PUBLIC
Westchester Co. Clerk and Register.
New York Co. Clerk No. 749 Reg. No. 3 H 473
Commission Expires March 30, 1943

STANDARD-VACUUM OIL COMPANY
Claimant
E. T. Singer
Signature E. T. Singer

SEE INSTRUCTIONS ON REVERSE SIDE)

PLAINTIFF'S EX. 8
Page 1

YOKOHAMA STATION, August 31st, 1941.

CASH ACCOUNT

The National City Bank of New York		¥54,745.21
The Dai-Ichi Ginko, Ltd.	¥131,788.69	
Less Checks Outstanding	1,655.50	130,133.19
The Mitsui Bank, Ltd.		168,316.73
The Sumitomo Bank, Ltd.	129,031.61	
Less Checks Outstanding	7,034.96	121,996.65
The Yokohama Koshin Bank, Ltd.		2,039.80
The Yokohama Specie Bank, Ltd.	347,130.84	
Add Checks deposited, but not credited by the Bank in this month.	1,913.47	349,044.31
The Yasuda Bank, Ltd.		5,814.94
P. O. Transfer Bureau.		30,459.14
		¥862,549.97

CASH ON CALL ACCOUNT

The Yokohama Specie Bank, Ltd.	¥700,000.00

COMPILED BY [illegible]

CHECKED BY [illegible]

Ex. 5
Page 2

1078 *Plaintiff's Exhibit 8.*

EXHIBIT A.

Facts Upon Which Claim of Standard-Vacuum Oil Company is Based.

Pursuant to permission granted by the Japanese authorities, certain contracts were made in Yokohama between Standard-Vacuum Oil Company, hereinafter sometimes referred to as Standard, and Yokohama Specie Bank, Ltd., hereinafter sometimes referred to as Yokohama Specie, pro-
1079 viding for the following telegraphic transfers to be made to New York during the month of August, 1941:

On or about 2/13/41 U. S. $92,847.19 at exchange 23-7/16 ¥ 396,148
On or about 3/20/41 U. S. $139,894.92 at exchange 23-7/16 ¥ 596,885
On or about 3/20/41 U. S. $187,006.64 at exchange 23-7/16 ¥ 797,895
On or about 3/20/41 U. S. $137,812.50 at exchange 23-7/16 ¥ 588,000
Total U. S. $557,561.25 ¥ 2,378,928

1080 On or about July 28, 1941, restrictions were imposed by the Japanese authorities upon American funds in Japan and all outstanding permits were frozen. As a result, Standard's Yokohama office was not able to make the remittances which it ordinarily would have made during the first part of August.

By cable dated August 27, 1941, Standard's Yokohama office advised Standard's New York office that the Japanese government had authorized the remittances which normally would have been made early in August in the amount of $557,561.25, United States currency.

Plaintiff's Exhibit 8.

1081 On or about August 27, 1941, Standard through its Yokohama office delivered its check in the amount of ¥ 2,378,928 to Yokohama Specie, Yokohama, Japan, to cover said transfer with instructions to pay claimant in New York $557,561.25. Said Yokohama Specie charged the amount of said check to Standard's Yokohama account and said account, at least prior to the outbreak of war between the United States and Japan on December 7, 1941, has never been recredited with the amount of said check or any part thereof.

1082 On August 29, 1941, claimant was advised over the telephone by Yokohama Specie's New York Agency, hereinafter sometimes referred to as the Agency, that the latter had received telegraphic instructions from Yokohama Specie in Yokohama, Japan, and was ready to pay to claimant $557,561.25 and that said Agency would pay said funds to claimant out of the funds of said Agency on deposit with Guaranty Trust Company of New York upon the granting of a license by the Treasury Department permitting the transfer of said amount by the Agency to Standard. This notification by telephone was later confirmed by letter

1083 dated the same day, a copy of which is annexed to the Proof of Claim herein as Exhibit D, in which the Agency stated that it understood that claimant was filing an application with the Treasury Department for a license "in order to permit us [New York Agency] to make this payment to you [claimant]". On August 29, 1941, after receiving advice from Yokohama Specie's New York Agency that $557,561.25 was available to claimant, claimant applied to the Treasury Department for a license to receive said funds from said New York Agency and submitted a supplemental applica-

1084 *Plaintiff's Exhibit 8.*

tion on December 29, 1941. These applications were denied in January, 1942. No further steps have been taken in the matter, since claimant was advised by the office of the Superintendent of Banks, that nothing further could be done until the time for filing formal claims. Accordingly, this claim is filed herein.

The within claim is in addition to a claim for yen 4,000,000, equivalent to $937,500 at exchange rate of .23-7/16, which claimant had on deposit with Yokohama Specie as of December 7, 1941,
1085 and which claim is being filed simultaneously herewith, and in which no priority of payment is demanded. The amount claimed herein does not include any part of said claim for yen 4,000,000 nor does the claim for the said yen 4,000,000 include any part of the amount claimed herein.

E. T. S.

(Exhibits B, C & D annexed are omitted pursuant to Stipulation, see pg. 506 *infra*.)

1086

Plaintiff's Exhibit 8.

1087

EXHIBIT E.

IN THE MATTER *of* The Liquidation of the Business and Property in New York of the YOKOHAMA SPECIE BANK, LTD.	Affidavit.

1088

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

HAROLD MIDTBO, being duly sworn, deposes and says:

That he is Assistant Treasurer of Standard-Vacuum Oil Company (hereinafter called Standard), and in and during the month of August, 1941, was an assistant in the Treasurer's Department of Standard, in charge of cable remittances from foreign countries.

1089

That for many years prior to August, 1941, it had been the custom and practice for Standard in Yokohama, Japan, to purchase dollars for transfer by cable to Standard in New York through Yokohama Specie Bank, Ltd., Yokohama, Japan (hereinafter called Yokohama Specie).

That, according to such custom and practice, Yokohama Specie would effect such transfer by cabling its New York Agency (hereinafter called the Agency) to pay Standard the amount of dollars directed to be transmitted to Standard New York by Standard Yokohama. Said Agency, upon receipt of such telegraphic transfer would immedi-

1090 *Plaintiff's Exhibit 8.*

ately make payment by check to Standard out of the funds of said Agency in New York.

That on Thursday, August 28, 1941, Standard received a cable message, a copy of which is attached to the proof of claim herein as Exhibit B, from Standard Yokohama, saying that Standard Yokohama would remit $557,561.25 on Friday, August 29, through Yokohama Specie.

That, on information and belief, Gustav Hapke (hereinafter called Mr. Hapke) was Cashier of said Agency in and during the month of August,
1091 1941, and until about December 8, 1941.

That deponent, upon receipt of said cable message, telephoned Mr. Hapke and informed him that Standard had received said cable message and inquired if said Agency had received the telegraphic transfer for Standard. Deponent was informed that the telegraphic transfer had not yet been received by said Agency. Deponent informed Mr. Hapke that the transfer probably would be received by said Agency on August 28th or 29th and that Standard would apply for a license from the Treasury Department of the United States, per-
1092 mitting the Agency to pay and Standard to receive the amount of the transfer.

That on August 29, 1941, Mr. Hapke telephoned to deponent and informed deponent that said Agency had received the telegraphic transfer and had available the $557,561.25 for payment to Standard. A photostatic copy of the telegraphic transfer is attached to the Proof of Claim herein as Exhibit C. Deponent informed Mr. Hapke that Standard was making the necessary application for a license from the Treasury Department and Mr. Hapke informed deponent that said Agency was ready to pay the $557,561.25 to Stand-

Plaintiff's Exhibit 8.

ard as soon as the license was granted. On September 2, 1941, Standard received a letter from said Agency, dated August 29, 1941, a photostatic copy of which is attached to the Proof of Claim herein as Exhibit D, confirming said telephone conversation.

That thereafter and during the period between August 29, 1941, and December 8, 1941, Mr. Hapke telephoned deponent on numerous occasions to inquire what progress was being made in procuring a license from the Treasury Department for the Agency to pay Standard the funds.

HAROLD MIDTBO.

Sworn to before me this 19th day of November, 1942.

WM. HARGREAVES
Notary Public
Westchester Co. Clerk and Register
New York Co. Clerk No. 749 Reg. No. 3H473
Commission Expires March 30, 1943

(NOTARIAL SEAL)

1096 *Plaintiff's Exhibit 8.*

EXHIBIT F.

IN THE MATTER *of* the Liquidation of the Business and Property in New York of the YOKOHAMA SPECIE BANK, LTD.	Affidavit.

1097

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

EUGENE J. KENNY, being duly sworn, deposes and says:

That he is and was at all times mentioned herein Assistant Treasurer of Standard-Vacuum Oil Company, hereinafter called Standard, having general supervision of foreign remittances and license problems in connection with foreign exchange transactions.

1098 That on Thursday, August 28, 1941, Standard New York received a cable message from Standard Yokohama saying that said Standard Yokohama would remit $557,561.25 on Friday, through Yokohama Specie Bank, Ltd., Yokohama, Japan, hereinafter called Yokohama Specie.

That on Friday, August 29, 1941, deponent was informed that Yokohama Specie Bank, Ltd., New York Agency, hereinafter called the Agency, had received a telegraphic transfer for Standard of $557,561.25. On August 29, your deponent started the preparation of an application to the Treasury Department to enable Standard to receive, and the

Plaintiff's Exhibit 8.

New York Agency to make, the payment of the funds. In connection with the preparation of that application, your deponent on that day had several conversations over the telephone with E. J. Mulligan and Gustav Hapke, employees of said Agency. That during the course of telephone conversations with Messrs. Mulligan and Hapke on said date, deponent inquired in what manner, and from what funds said payment would be made and what entries would be made to show such payment.

Deponent was informed that said payment would be made out of the funds that said Agency had on deposit with Guaranty Trust Company of New York, 140 Broadway, New York City. Deponent was also informed that the Agency would debit, in respect of the $557,561.25, the account maintained on the books of the Agency, in the name of the Yokohama Specie, and that the Guaranty Trust Company would make the payment to the claimant of said amount and debit on its books the blocked account maintained on said Guaranty's books in the name of the Agency.

E. J. KENNEY.

Sworn to before me this 19th day of November, 1942.

WM. HARGREAVES
Notary Public
Westchester Co. Clerk and Register
New York Co. Clerk No. 749 Reg. No. 3 H 473
Commission Expires March 30, 1943

(NOTARIAL SEAL)

1102 *Plaintiff's Exhibit 8.*

EXHIBIT G.

Claimant demands priority of payment on the ground that claimant is a creditor whose claim is preferred against the assets in this state of Yokohama Specie Bank, Ltd., as provided by §606, paragraph 4(a), of the banking law, as follows:

(1) Claimant is a creditor of the New York Agency of Yokohama Specie Bank, Ltd., and its claim arises out of a transaction had by claimant
1103 with said New York Agency, because when the advice of the telegraphic transfer for claimant of $557,561.25 was received by said New York Agency from Yokohama Specie Bank, Ltd., Yokohama, Japan, and when said New York Agency notified claimant that it was ready to pay said funds to claimant, a credit for said claimant with said agency was thereby established.

(2) Your deponent believes that the books and records of said New York Agency show that it is justly indebted to claimant for the amount
1104 claimed.

Plaintiff's Exhibit 8. 1105

ELLIOTT V. BELL

Superintendent of Banks, as Liquidator of the Business and Property in New York of
THE YOKOHAMA SPECIE BANK, LTD.
526 Broadway, New York City

No. 5092

NOTICE OF REJECTION OF CLAIM OR ACCOUNT PAYABLE

1106

Pursuant to section 624 of the Banking Law of the State of New York you are hereby notified that I have rejected the following checked item:

☒ Claim filed against Yokohama Specie Bank, Ltd. Claim No. 1891 for $557,561.25.

☐ Account Payable as shown by the books and records of Yokohama Specie Bank, Ltd. and as to which no claim has been presented, in the sum of $..... (P.....L.....).

Dated: Feb. 11, 1943

1107

ELLIOTT V. BELL,
Superintendent of Banks of the State of New York.

By C. MURRAY
Special Deputy Superintendent

Standard-Vacuum Oil Co.
26 Broadway
New York, New York.

mk

1108

Plaintiff's Exhibit 9.

Assignment.

KNOW ALL MEN BY THESE PRESENTS that Standard-Vacuum Oil Company, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware (hereinafter called Standard - Vacuum), for value received, does hereby assign to Eugene T. Singer all claims which Standard-Vacuum has or may have against The Yokohama Specie Bank, Limited, a corporation
1109 organized under the laws of the Empire of Japan and licensed to do business in the State of New York pursuant to the Banking Law of said State, by reason of any and all transactions heretofore had by Standard-Vacuum with said Bank or with the New York Agency of said Bank, and all claims which it has or may have, by reason of said transactions or any of them, against the Superintendent of Banks of the State of New York in respect of assets of said Bank in said State.

IN WITNESS WHEREOF, Standard-Vacuum Oil Company has caused this Assignment to be signed
1110 and sealed on its behalf this 10 day of August, 1943.

STANDARD-VACUUM OIL COMPANY,
(SEAL) by P. W. PARKER

Attest:

C. SCHMIDT
Asst. Secretary

Accepted, August 10th, 1943.

EUGENE T. SINGER

(Acknowledged by P. W. PARKER, President of Standard-Vacuum Oil Co. on August 10, 1943.)

1111

Plaintiff's Exhibit 10.

(Omitted pursuant to Stipulation, *infra* pg. 506).

Plaintiff's Exhibit 11.

MACKAY RADIO

"VIA MACKAY RADIO"

DEL 242 AUG2941

1112

52HB/CM 14/13

YOKOHAMA 29 515PM

LC SHOKIN

NEWYORK

91781 STANDARD VACUUM OIL CO DOLLARS 557561 CENT TWENTYFIVE

OKADA

1113

1114

Plaintiff's Exhibit 12.

1115 *(Opposite ☛)*

1116

1120

Plaintiff's Exhibit 14.

Schedule of Remittances Made by Standard, Yokohama, Through Yokohama Specie, Yokohama and Paid to Standard in New York by the Yokohama Specie Bank, N. Y. Agency in 1941.

Date and Amount of Remittance as Shown by Remittance Reports of Standard's Yokohoma Office		Date and Amount of Payment by Agency to Standard in New York as Shown by Agency's Records	
Date	Amount	Date	Amount
1/ 7/41	$152,739.17	1/ 7/41	$152,739.17
1/ 8/41	26,182.26	1/ 8/41	26,182.26
2/ 1/41	131,835.93	2/ 1/41	131,835.93
2/ 6/41	39,338.00	2/ 6/41	39,338.00
2/ 7/41	92,168.90	2/ 7/41	92,168.90
2/ 8/41	25,407.42	2/ 8/41	25,407.42
2/10/41	46,875.00	2/10/41	46,875.00
2/24/41	319,472.28	2/24/41	319,472.28
3/ 5/41	72,881.01	3/ 5/41	72,881.01
3/ 6/41	234,375.00	3/ 7/41	234,375.00
3/11/41	126,032.58	3/11/41	126,032.58
3/14/41	18,086.25	3/14/41	18,086.25
4/ 1/41	47,669.12	4/ 1/41	47,669.12
5/ 1/41	978,875.62	5/ 1/41	978,875.62
6/ 3/41	350,923.35	6/ 3/41	350,923.35
7/ 1/41	626,455.75	7/ 1/41	626,455.75

1121

1122

Plaintiff's Exhibit 15. 1123

License No. N. Y. 338836-SU
Date: January 14, 1942

LICENSE

(Granted Under the Authority of Executive Order No. 8389 of April 10, 1940, as Amended, and the Regulations and Rulings Issued Thereunder)

To William R. White, as Superintendent of Banks of the State of New York (1) 1124
80 Centre Street, New York, New York

Sirs:

1. Pursuant to your application of January 5, 1942, the following transaction is hereby licensed:

(See Reverse Side)

2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and 1125 is subject to the conditions, among others, that you will comply in all respects with Executive Order No. 8389 of April 10, 1940, as amended, the Regulations and Rulings issued thereunder and the terms of this license.

3. The licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank through which the license was issued, the Postmaster at the place of mailing or the Collector of Customs at the port of exportation.

1

Register of Bills & T. T. Payable

Yokohama

Date	No.	Under Advice or on Application	Applicant	In Favour of	Face Amount	Rate of Exchange	Date of Payment	Remarks
JUL 1 - 1941	1			Stanford Vacuum Oil Company ARRIVED	6764575	✓	JUL 1 - 1941	
JUL 10 1941	2		per S.S. Hikawa Maru	George Friedlander RECEIPT ARRIVED	47140	✓	JUL 10 1941	
JUL 12 1941	3			Berkey & Co. RECEIPT ARRIVED	9783	✓	JUL 12 1941	
JUL 14 1941	4			Mitsui & Co. Ltd. RECEIPT ARRIVED	439	✓	JUL 14 1941	
JUL 15 1941	5			Kidder Company Yokohama	6894	✓	JUL 15 1941	AUG 5 1941
DEC 2 1941	6			City of Yokohama %	224000		DEC 2 1941	DEC 4 1941
					7009579			

Pff E 6 for all
6/3/46 [illegible]

[redacted]

1

Register of Bills & T. T. Payable

Office: Yokohama T.F.

Date	No.	Under Advice or on Application	Applicant	In Favour of	Face Amount	Rate of Exchange	Date of Payment	Remarks
JAN 6 1941	1		Banque de Indo Chine	Nat. City Bk	120000.00	RECEIPT ARRIVED	JAN 6 1941	#2
JAN 7 1941	2			Standard Vacuum Oil Co	52734.17	RECEIPT ARRIVED	JAN 7 1941	#3
JAN 8 1941	3				26182.26	RECEIPT ARRIVED	JAN 8 1941	#4
JAN 8 1941	4			Kyodo Kumiai Nat. City Bk	6453.31		JAN 8 1941	#5
JAN 10 1941	5		Ford Motor Co		117.18750		JAN 10 1941	#1
JAN 13 1941	6		Banque de Indo Chine	Nat. City Bk	117.18750	RECEIPT ARRIVED	JAN 13 1941	#2
JAN 15 1941	7				150.00000	RECEIPT ARRIVED	JAN 15 1941	#3
JAN 16 1941	8				55593.78	RECEIPT ARRIVED	JAN 16 1941	#6
JAN 17 1941	9			Horace E. Gould	3777	RECEIPT ARRIVED	JAN 17 1941	#1
JAN 17 1941	10			B. F. Goodrich Co	127.6798		JAN 17 1941	#3
JAN 23 1941	1			Shelton & Co.	1837.6	RECEIPT ARRIVED	JAN 23 1941	#2
JAN 27 1941	2			George Cowan	33000	RECEIPT ARRIVED	JAN 27 1941	#3
JAN 28 1941	3			Kakuji Ogawa & Sons	21097		JAN 28 1941	#4
JAN 31 1941	4		Banque de Indo Chine	Nat. City Bk	175781.25	RECEIPT ARRIVED	JAN 31 1941	JAN 30 1941 #1
	5				100000.00	RECEIPT ARRIVED	JAN 31 1941	#1
FEB 1 1941	6			Standard Vacuum Oil Co	31855.73	RECEIPT ARRIVED	FEB 1 1941	#5
	7		Ford Motor Co	Nat. City Bk	117.18750	RECEIPT ARRIVED	FEB 1 1941	#2
FEB 3 1941	8			Bingo & Co. Inc.	1857.12	RECEIPT ARRIVED	FEB 3 1941	#3
FEB 5 1941	9		Banque de Indo Chine	Nat. City Bk	115.0000	RECEIPT ARRIVED	FEB 5 1941	#5 & 15.83
FEB 6 1941	10			Standard Vacuum Oil Co	39338.00	RECEIPT ARRIVED	FEB 6 1941	#1
	1			N. Y. K.	4196	RECEIPT ARRIVED	FEB 6 1941	#4
FEB 7 1941	2			Standard Vacuum Oil Co	9716.90	RECEIPT ARRIVED	FEB 7 1941	#2
	3			Miguel Donzay	38.02	RECEIPT ARRIVED	FEB 7 1941	#3
	4			Emelia Bullock	42.99	RECEIPT ARRIVED	FEB 7 1941	Cancelled
FEB 8 1941	5			Standard Vacuum Oil Co	25407.42	RECEIPT ARRIVED	FEB 8 1941	#1
FEB 10 1941	6				46875.00	RECEIPT ARRIVED	FEB 10 1941	#2
	7		Ford Motor Co	Nat. City Bk	200000	RECEIPT ARRIVED	FEB 10 1941	#5
FEB 13 1941	8			Mazuraki Bros	39942		FEB 13 1941	#3
FEB 17 1941	9			Wallace E. Gould	6583	RECEIPT ARRIVED	FEB 17 1941	#5
	30			George Ryllander	15659	RECEIPT ARRIVED	FEB 17 1941	#1
	1			George Cowan	11000	RECEIPT ARRIVED	FEB 17 1941	#2
FEB 19 1941	2			C. D. Walker	3963	RECEIPT ARRIVED	FEB 19 1941	#3
					18/0300			

[redacted]

Register of Bills & T. T. Payable

Ref. to 78 for M 4/3/41 2

11:111 Yokohama T.T.

Date	No.	Under Advice or on Application	Applicant	In Favour of	Face Amount	Date of Issue	Date of Payment	Remarks
FEB 24 1941	33			Standard Vacuum Oil Co	319,872.28		FEB 24 1941	
FEB 25 1941	4		Banque de Indo Chine	French Amer. Banking Corp	115,000.00		FEB 25 1941	
	5			F. Schlobohm	25.00		FEB 25 1941	
FEB 25 1941	6			Kanagawa Mfg Co	541.58		FEB 25 1941	
FEB 26 1941	7			Yuasa Trdg. Co.	24.00		FEB 26 1941	
FEB 28 1941	8		Banque de Indo Chine	French Amer. Banking Corp	125,000.00		FEB 28 1941	
	9			Standard Vacuum Oil Co	410,562.5		FEB 28 1941	
	40			Nagata Bros.	134.62		FEB 28 1941	
MAR 1 1941	1		Asiatic Pet Co	Irving Trust Co	3,203.00		MAR 1 1941	
	2		Standard Vacuum Oil Co	Standard Vacuum Oil Co	117,187.50		MAR 1 1941	
MAR 3 1941	3		Yokohama Elec Machinery Mfg Co.	Yokohama Elec Machinery Mfg Co.	9.00		MAR 3 1941	
MAR 3 1941	4			Salmon & Hanway	21.56		MAR 3 1941	
MAR 5 1941	5		Banque de Indo Chine	French Amer. Banking Corp	90,000.00		MAR 5 1941	
	6			Standard Vacuum Oil Co	22,881.01		MAR 5 1941	
	7			Grace E. Smith	57.65		MAR 5 1941	
MAR 7 1941	8			Standard Vacuum Oil Co	234,375.00		MAR 7 1941	
MAR 10 1941	9			Eastern Trdg Co	43.07		MAR 10 1941	
MAR 10 1941	50			Standard Vacuum Oil Co	126,032.58		MAR 11 1941	
	1			George Smith & Co	200.13		MAR 11 1941	
MAR 11 1941	2			Standard Vacuum Oil Co	18,082.25		MAR 14 1941	MAR 14 1941
MAR 24 1941	3			George C. Jones	19.00		MAR 24 1941	
MAR 27 1941	4			C. H. Wells & Co	90.81		MAR 27 1941	
	5		Asiatic Pet. Co.	Irving Trust Co	2,773.16		MAR 1 1941	
MAR 29 1941	6			Ingvald Hanson	32.24		MAR 28 1941	APR 9 1941
APR 1 1941	7			Standard Vacuum Oil Co	47,669.12		APR 1 1941	
APR 10 1941	8			Yokohama Yen Bank Ltd	198.63		APR 10 1941	
APR 14 1941	9			Banque de Indo Chine	17.60		APR 14 1941	
APR 16 1941	60			Horace E. Gould	18.30		APR 16 1941	
	1			Jose Antonio Arranz	6.54		APR 16 1941	
APR 19 1941	2			U. S. Trading Co	263.49		APR 19 1941	
APR 26 1941	3			C. Nemazee Pte.	23.37		APR 26 1941	
APR 28 1941	4			Yokohama Specie Bank Ltd	0.00		APR 28 1941	
					3,963,917.00			

3

Register of Bills & T. T. Payable

Pff & TC for 4
6/3/41 JKO

Yokohama

Date	No.	Under Advice or on Application	Applicant	In Favour of	Face Amount	Rate of Exchange	Date of Payment	Remarks
APR 29 1941	65						APR 29 1941	#5
APR 30 1941	6			Curacao Trdg Co.	147975		APR 30 1941	#1
MAY 1 1941	7			Stchegarev Kindelevsky	9208		MAY 1 1941	#2
	8			Schenker & Co	178562		MAY 1 1941	#3
			Asiatic Pet.	Irving Trust Co.	6514971		MAY 5 1941	#3
MAY 5 1941	9			Samuel Jones	22518		MAY 7 1941	#4
MAY 7 1941	10			C. D. Walker	39615		MAY 16 1941	#1
MAY 16 1941	1			Mitsui & Co.	35000		MAY 16 1941	#2
	2			Soc. Comm. Chinese Bank	32072		MAY 21 1941	#4
MAY 21 1941	3			M. Nishikawa	100000		MAY 21 1941	#5
MAY 21 1941	4			B. F. Goodrich Co	375000		MAY 22 1941	#5
	5			Eastern Pacific Co.	24704		MAY 23 1941	#4 MAY 23 1941
				Samuel Jones	1809		MAY 24 1941	#2
MAY 23 1941	6			City of Yokohama %	326644 00		JUN 3 1941	#4
MAY 24 1941	7			Asiatic Pet Co. Siberia Co.	48511 76		JUN 3 1941	#5
JUN 2 1941	8			Standard Vacuum Oil	350235		JUN 3 1941	#1 ½ 94.10
	9			Curacao Trdg Co.	1068		JUN 4 1941	#2
	80			Irving Trust Co.	934		JUN 5 1941	#3 JUN 13 1941
JUN 4 1941	1			M. Nishikawa	5000		JUN 16 1941	#4
JUN 5 1941	2			C. D. Walker Bankers	26955		JUN 21 1941	#1 ½ 94.94
JUN 16 1941	3			K. Ohmura & Co.	1669		JUN 25 1941	#5
JUN 21 1941	4			Mitsubishi Shoji Kaisha	15796		JUN 27 1941	#3
JUN 22 1941	5			Yokohama Specie Bank	500 00		JUL 1 1941	#4
JUL 25 1941	6			M. Nishikawa	200 00			#5
JUN 27 1941	1			George Headland	8676			Sight T. T. Payable
JUN 30 1941	2				5345[illegible]			#6

[redacted]

1126 *Plaintiff's Exhibit 15.*

4. This license is not transferable, is subject to the provisions of Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder and may be revoked or modified at any time in the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation on the part of the applicant or his duly authorized agent, it may,
1127 in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

Issued by direction and on behalf of the Secretary of the Treasury:

FEDERAL RESERVE BANK OF NEW YORK
per pro C. D. BLAUVELT

The Act of October 6, 1917, as amended, provides in part as follows:

"* * * Whoever willfully violates any of
1128 the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both."

NOTE: If this license covers gold in any form the provisions of the Provisional Regulations issued under the Gold Reserve Act of 1934 must also be complied with.

Plaintiff's Exhibit 15. 1129

REVERSE SIDE

* * * * *

You are hereby authorized to make payments to depositors, effect the sale of securities and delivery of collateral, make payments of salaries and other expenses and to perform all other acts appropriate to the orderly liquidation of the assets, property and business in the State of New York of the following Foreign Banking Corporations in accordance with the laws of the State of New York: 1130

Bank of Chosen
Bank of Taiwan, Ltd.
Mitsubishi Bank, Limited
Mitsui Bank, Limited
The Sumitomo Bank, Limited
Yokohama Specie Bank, Limited
Banca Commerciale Italiana
Banco di Napoli
Banco di Roma
Credito Italiano.

This license is issued subject to the following stipulations: 1131

1. All payments to countries designated in the Order or nationals thereof, shall be made to domestic banks for credit to the blocked accounts of such nationals.

2. Transactions involving a blocked national other than the bank in liquidation shall be effected only as authorized by a general or specific license.

3. Any distribution on account of stock ownership shall only be made pursuant to a specific license.

* * * * *

1132 **Plaintiff's Exhibit 16.**

Office of

ALIEN PROPERTY CUSTODIAN

Washington

September 28, 1942

Superintendent of Banks of
the State of New York
New York, New York

Re: Yokohama Specie Bank, Ltd.

1133 Dear Sir:

Pursuant to Supervisory Order Number 27 issued by the undersigned under date of September 28, 1942, a copy of which is enclosed herewith, the undersigned has undertaken the supervision to the extent deemed necessary or advisable from time to time by the undersigned, of the business enterprise and property referred to in such order, without, however, vesting such business enterprise or any of its capital stock or property or assets.

1134 For the present, it is contemplated that you shall continue to retain possession of and liquidate such business enterprise, its property and assets, and in the course thereof you may do such acts and perform such duties as may be required of or permitted to you by and in accordance with and subject to the provisions of the Banking Law of the State of New York. You shall, however, within a reasonable time prior to the acceptance by you of any claim or claims, deliver to the undersigned or to his duly authorized agent, a written notice of the proposed acceptance together with a statement setting forth the nature and amount of the claim or claims intended to be accepted and the names, addresses and, so far as

Plaintiff's Exhibit 16.

known, the nationalities of the holders or owners thereof. The undersigned will then examine the same and take whatever action he may deem necessary or advisable. In connection therewith you are requested to accord to the undersigned or his duly authorized representative access to and the right to inspect at any time your books and records dealng with the aforesaid company or its New York branch. 1135

You are also requested to notify the undersigned when you have liquidated assets sufficient to produce funds necessary to pay, and there have been paid, all the accepted or established claims of creditors whose claims arose out of transactions had by them with the New York branch of such business enterprise, or whose names appear as creditors on the books of such branch, together with interest thereon and the expenses of liquidation, so that the undersigned may take such action at that time with respect to the assets remaining in your hands as he may deem necessary in the interest of the United States. 1136

The undersigned reserves such rights as he may have under the authority vested in him by law to vary from time to time the extent of the supervision of the aforesaid business enterprise and property or to terminate the same, provided that the extent of such supervision will be changed or terminated only by means of written notification transmitted to you by the undersigned or his duly authorized agent. 1137

Until receipt by you of such notice in writing you may proceed with the liquidation of the aforesaid company and its assets in the manner herein set forth.

Very truly yours,

LEO T. CROWLEY
Alien Property Custodian

1138

Plaintiff's Exhibit 17.

FEDERAL RESERVE BANK
OF NEW YORK.

Fiscal Agent of the United States

October 29, 1942

Yokohama Specie Bank, Ltd., New York Agency
c/o Supt. of Banks of the State of New York
80 Centre Street
New York, New York

1139 Dear Sirs:

Reference is made to Supervisory Order No. 27, executed on September 23, 1942, by the Alien Property Custodian.

In view of such order, you are authorized by the Treasury Department, so far as Executive Order No. 8389, as amended, is concerned, to engage in any transaction on or after October 29, 1942, which might be engaged in without a specific license of the Treasury Department by a person who is not a national of any blocked country.

License No. NY 338836-SU is hereby revoked
1140 insofar as it applied to Yokohama Specie Bank, Ltd., New York Agency.

It is suggested that you communicate with the office of the Alien Property Custodian concerning the applicability to your enterprise of any orders, rulings or regulations of such office.

Very truly yours,

per pro W. F. WELLING, JR.
Foreign Property
Control Department

Plaintiff's Exhibit 18.

(Opposite ☛)

A. No. 1-B

(p. 381)

The Yokohama Specie Bank, Ltd.

No. 6

REGISTER ADVICE } of ~~DRAFTS~~ and T. T. SOLD

AUG 29 1941
THE YOKOHAMA SPECIE BANK
NEW YORK

On New York

Advice Forwarded to
Approximate Date of Arrival

Page

Date	No.	Under Advice of or on Application	Applicant	In Favour of	Face Amount	Rate of Exch.	Equivalent	Amount to be Debited
	7		Standard Vacuum Oil Co		$55756.25			

OCT 25 1941

5

e Bank, Ltd.

nd T. T. SOLD

AUG 29 1941
THE YOKOHAMA SPECIE BANK
NEW YORK

Advice Forwarded to
Approximate Date of Arrival

Page

Rate of Exch.	Equivalent	Amount to be Debited	Date of Payment	Remarks
	OCT 25 1941			

Made in Japan

1144 **Plaintiff's Exhibit 19.**

TRANSLATION

Kura Tame Yunyu 11 No. 4075

Special Permission for Purchasing Foreign Exchange

Feb., 8th 1941.

To Standard Vacuum Oil Co.
Yokohama Branch

1145 Your application dated Jan. 20, 1941, a copy of which attached hereto, is approved.

Amount U. S. Dollar equivalent for
¥ 487,857.00
(Proceeds of Machine-oil 1,032 kilolitre)

Permission Number Kotoku 427

Finance Minister
R. KAWADA. (sealed)

1. If the shipment of the cargo mentioned in this licence, delays, you will apply permission, without fail, for amendment of clauses concerning the time of shipment and delivery of exchange.

1146

1. When you receive the delivery of exchange contract set forth in this licence, you will present to a bank a notice of shipment or any other documents verifying the shipment of the cargo.

Remarks:

1. This licence shall be presented to a bank at the time of purchasing foreigning exchange and be endorsed.

2. This licence shall be presented to Custom Office at the time of importing goods and be endorsed.

Plaintiff's Exhibit 19.

3. If this licence is not utilized wholly or partly or becomes null and void before utilized wholly or partly, the Minister of Finance will be notified immediately with the effect through the Bank of Japan.

4. If the presentation set forth in 2., is practically hard, make a copy and obtain the verification of Custom Office of primary importing port for the effect. Then this copy will be deemed as substitute for this licence. However in this case Custom Office will make endorsement only on this copy.

Application for Special Permission on Purchasing Foreign Exchange.

Jan. 20th 1941

To H. E. R. Kawada
The Minister of Finance.

We hereby solicit your permission for purchasing the following foreign exchange.

1.	Applicant:	Standard Vacuum Oil Co., Yokohama Branch, No. 8 Yamashita-cho Yokohama Dealer of Petroleum.
2.	Kind of exchange:	Telegraphic Transfer
	Amount:	U. S. Dollar equivalent for ¥487,857.00
3.	Payee of Exchange:	Head Office Standard Vacuum Oil Co. No. 26 Broadway New York City N. Y. Manufacturer and Dealer of petroleum

1150 *Plaintiff's Exhibit 19.*

4.	Place of payment:	New York City
	Time of payment:	On arrival of exchange.
	Payer:	National City Bank of New York N. Y. Mitsui Bank, New York Yokohama Specie Bank Ltd., New York Hongkong & Shanghai Banking Corp., New York National City Bank of New York New York or
1151		Guaranty Trust Co., of New York (In case the exchange be sold by Daiichi Ginko Yokohama Branch)
5.	Spot or Contract:	Contract.
	Delivery:	During July 1941.
6.	Seller of Exchange:	Foreign exchange banks at Yokohama National City Bank of New York, Yokohama Daiichi Ginko, Yokohama
1152		Mitsui Bank, Yokohama Yokohama Specie Bank, Yokohama Hongkong Shanghai Banking Corp., Yokohama
7.	Expected time of purchases:	Within thirty days from the date of permission.

8. Purpose of purchase:

The purpose of purchasing foreign exchange is to remit to our Head Office, New York, the balance accrued by deducting the necessary business-expences from the proceeds of sale of the following cargo which

Plaintiff's Exhibit 19.

1153

is to be purchased by New York Head Office after obtaining this licence and be transported to various oil tanks and warehouses owned by us in Japan.

Kind of goods:	Machine Oil (list of tax for import No. 112-2-OTU-3-i)
Quantity:	1,032 Kilolitre
Unit of price:	¥472.73 per kilolitre (Price for consignment)
Price:	¥487,857.00
Origin:	U. S. A. & England
Port of shipping:	Dairen, Hongkong, Shanghai, Liverpool, London, New York, Philadelphia & others.
Time of shipping:	Within 30 days after obtaining licence.
Port of unloading:	Yokohama, Kōbe, Moji, Osaka, and other ports in Japan.
Time of arrival of cargo:	Within 90 days after obtaining licence.

1154

1155

Disposition of imported cargo:

The above cargo is to be imported not by order of this branch but as consignment at the discretion of our New York Head Office. And we sell the cargo to our customers as credit-sale. After collecting proceeds from customers we will send the money to our New York Office, deducting necessary running expences here.

9. Other remarks:

For Standard Vacuum Oil Co.,
H. W. Daniels.
F. E. McCorkle.

1156 **Plaintiff's Exhibit 20.**

TRANSLATION

Kura Tame Yunyu 1 No. 4199
Special Permission for Purchasing Foreign Exchange

March 15, 1941.

To Standard Vacuum Oil Co.
Yokohama Branch

Your application dated Feb 26, 1941, a copy of which attached hereto, is approved.

1157 Amount U. S. Dollar equivalent for
¥596,885.00

(Proceeds of Kerosene 5795 Kilolitre)

Permission Number Kotaku 1043.

Finance Minister
R. KAWADA. (sealed)

Remarks:

1. This licence shall be presented to a bank at the time of purchasing foreign exchange and be endorsed.

1158

2. This licence shall be presented to Custom Office at the time of importing goods and be endorsed.
3. If this licence is not utilized wholly or partly or becomes null and void before utilized wholly or partly, the Minister of Finance will be notified immediately with the effect through the Bank of Japan.
4. If the presentation set forth in 2., is practically hard, make a copy and obtain the verification of Custom Office of primary importing port for the effect. Then this copy will be deemed as substitute for this licence. However in this case Custom Office, will make endorsement only on this copy.

Plaintiff's Exhibit 20. 1159

Application for Special Permission on Purchasing Foreign Exchange.

Feb., 26th 1941.

To H. E. R. Kawada
The Minister of Finance.

We hereby solicit your permission for purchasing the foreign exchange.

1.	Applicant:	Standard Vacuum Oil Co., Yokohama Branch. No. 8 Yamashita-chô Yokohama Dealer of Petroleum. 1160
2.	Kind of exchange:	Telegraphic Transfer
	Amount:	U. S. Dollar equivalent for ¥596,885.—
3.	Payee of exchange:	Head Office Standard Vacuum Oil Co. No. 26 Broadway New York City N. Y. Manufacturer and Dealer of petroleum
4.	Place of payment:	New York City 1161
	Time of payment:	On arrival of exchange.
	Payer:	National City Bank of New York, N. Y. Mitsui Bank, New York Yokohama Specie Bank Ltd., New York Hongkong & Shanghai Banking Corp., New York National City Bank of New York, New York or Guaranty Trust Co., of New York (In case the exchange be sold by Daiichi Ginko Yokohama Branch)

1162 *Plaintiff's Exhibit 20.*

5.	Spot or Contract:	Contract.
	Delivery:	During August 1941.
6.	Seller of exchange:	Foreign exchange banks at Yokohama Yokohama National City Bank of New York, Yokohama Daiichi Ginko, Yokohama Mitsui Bank, Yokohama Yokohama Specie Bank, Yokohama
1163		Hongkong Shanghai Banking Corp., Yokohama
7.	Expected time of purchase:	Within thirty days from the date of permission.

8. Purpose of purchase:

The purpose of purchasing foreign exchange is to remit to our Head Office, New York, the balance accrued by deducting the necessary business-expences from the proceeds of sale of the following cargo which is to be purchased by New York Head Office after obtaining this licence and be transported to various
1164 oil tanks and warehouses owned by us in Japan.

Kind of goods:	Petroleum (Kerosene) (List of tax for import No. 112-2-OTU-2)
Guantity:	5,795 Kilolitre
Unit of price:	¥103.00 per Kilolitre (Price for consignment)
Price:	¥596,885.00
Origin:	Dutch Indies.
Port of shipping:	Various ports in Dutch Indies.
Time of shipping:	Within 30 days after obtaing license
Port of unloading:	Yokohama, Itozakis, Nagasaki, Osaka, Kobe and other ports in Japan.

Plaintiff's Exhibit 21.

1165

Time of arrival of cargo: Within 60 days after obtaining licence.

Disposition of imported cargo:

The above cargo is to be imported not by order of this branch but as consignment at the discretion of our New York Head Office. And we sell the cargo to our customers as credit-sale. After collecting proceeds from customers we will send the money to our New York Office, deducting necessary running expences here.

1166

9. Other remarks:

For Standard Vacuum Oil Co.,

C. E. Meyer
F. E. McCorkle

Plaintiff's Exhibit 21.

Translation

Kura Tame Yunyu 1 No. 4197
Special Permission for Purchasing Foreign Exchange

1167

March 15, 1941.

To Standard Vacuum Oil Co.
Yokohama Branch

Your application dated Mar., 7, 1941, a copy of which attached hereto, is approved.

Amount U. S. Dollar equivalent for
¥797,895.00

(Proceeds of Petroleum 7599 Kilolitre)

Permission Number Kotoku 1044.

Finance Minister
R. Kawada. (sealed)

1168 *Plaintiff's Exhibit 21.*

Remarks:

1. This licence shall be presented to a bank at the time of purchasing foreign exchange and be endorsed.
2. This licence shall be presented to Custom Office at the time of importing goods and be endorsed.
3. If this licence is not utilized wholly or partly or becomes null and void before utilized wholly or partly, the Minister of Finance will be notified
1169 immediately with the effect through the Bank of Japan.
4. If the presentation set forth in 2., is practically hard, make a copy and obtain the verification of Custom Office of primary importing port for the effect. Then this copy will be deemed as subsfitute for this licence. However in this case Custom Office, will make endorsement only on this copy.

Application for Special Permission on Purchasing Foreign Exchange.

1170 Mar., 7th 1941.

To H. E. R. Kawada
The Minister of Finance.

We hereby solicit your permission for purchasing the following foreign exchange.

1. Applicant: Standard Vacuum Oil Co., Yokohama Branch. No. 8 Yamashita-cho Yokohama
Dealer of Petroleum.

2. Kind of exchange: Telegraphic Transfer
Amount: US Dollar equivalent for ¥797,895.—

Plaintiff's Exhibit 21. 1171

3.	Payee of exchange:	Head Office Standard Vacuum Oil Co. No. 26 Broadway New York City N. Y. Manufacturer and Dealer of Petroleum
4.	Place of payment:	New York City
	Time of payment:	On arrival of exchange.
	Payer:	National City Bank of New York, N. Y. Mitsui Bank, New York 1172 Yokohama Specie Bank, Ltd., New York Hongkong & Shanghai Banking Corp., New York. National City Bank of New York, New York, or Guaranty Trust Co., of New York (In case the exchange be sold by Daiichi Ginko Yokohama Branch)
5.	Spot or Contract:	Contract. 1173
	Delivery:	During August 1941.
6.	Seller of exchange:	Foreign exchange banks at Yokohama National City Bank of New York, Yokohama Daiichi Ginko, Yokohama Mitsui Bank, Yokohama Yokohama Specie Bank, Yokohama Hongkong Shanghai Banking Corp., Yokohama.
7.	Expected time of purchase:	Within thirty days from the date of permission.

1174 *Plaintiff's Exhibit 21.*

8. Purpose of purchase

The purpose of purchasing foreign exchange is to remit to our Head Office, New York, the balance accrued by deducting the necessary business-expenses from the proceeds of sale of the following cargo which is to be purchased by New York Head Office after obtaining this license and be transported to various oil tanks and warehouses owned by us in Japan.

Kind of goods:	Petroleum (List of Tax for Import No. 112—2—OTU—1)
1175 Quantity:	7,599 Kilolitre
Unit of price:	¥105.00 per Kilolitre (price for consignment) ¥112.00 (C.I.F. Price)
Price:	¥797,895.00 (Price for consignment ¥851,088.00 (Price for C.I.F.)
Origin:	Dutch Indies.
Port of shipping:	Various ports in Dutch Indies.
Time of shipping: 1176	Within 30 days after obtaining license
Port of unloading:	Yokohama, Itozaki, Nagasaki, Osaka, Kobe and other ports in Japan.
Time of arrival of cargo:	Within 60 days after obtaining licence.
Disposition of imported cargo:	

Plaintiff's Exhibit 21.

1177

The above cargo is to be imported not by order of this branch but as consignment at the discretion of our New York Head Office. And we sell the cargo to our customers as credit-sale. After collecting proceeds from customers we will send the money to our New York Office, deducting necessary running expences here.

9. Other remarks: Price, shown in actual invoice for the aforementioned cargo is ¥ 112.00 per kilolitre. It exceeds the price for consignment which is the basis of this application. However, we will fix the amount of remittance on basis of consignment-price. i.e. ¥ 105.00 per kilolitre.

1178

For Standard Vacuum Oil Co.,

C. E. Meyer.

F. E. McCorkle.

1179

1180 **Plaintiff's Exhibit 22.**

TRANSLATION

Kura Tame Yunyu I No. 4128
Special Permission for Purchasing Foreign Exchange

March 15, 1941.

To Standard Vacuum Oil Co.
Yokohama Branch

Your application dated Feb. 26, 1941, a copy of which attached hereto, is approved.

1181 Amount U. S. Dollar equivalent for ¥ 588,000.—

(Proceeds of Petroleum 5600 Kilolitre)

Permission Number Kotoku 1045

Finance Minister

R. KAWADA. (sealed)

1. When the shipment of the cargo mentioned in this licence, is decided and the cargo is imported, you will report the effect respectively to the Director of Exchange section.

1182 1. If it becomes necessary to amend a clause of this licence you will negotiate with Exchange section prior to file an application for amendment.

1. If it becomes impossible to import the cargo mentioned in this licence, wholly or partially, you will immediately report the effect, as well as reasons, to the Director of Exchange section.

Remarks:

1. This licence shall be presented to a bank at the time of purchasing foreign exchange and be endorsed.

Plaintiff's Exhibit 22.

1183

2. This licence shall be presented to Custom Office at the time of importing goods and be endorsed.

3. If this licence is not utilized wholly or partly or becomes null and void before utilized wholly or partly, the Minister of Finance will be notified immediately with the effect through the Bank of Japan.

4. If the presentation set forth in 2., is practically hard, make a copy and obtain the verification of Custom Office of primary importing port for the effect. Then this copy will be deemed as substitute for this licence. However in this case Custom Office, will make endorsement only on this copy.

1184

Application for Special Permission on Purchasing Foreign Exchange.

Feb., 26th 1941.

To H. E. R. Kawada
The Minister of Finance.

We hereby solicit your permission for purchasing the following foreign exchange.

1185

1. Applicant:	Standard Vacuum Oil Co., Yokohama Branch. No. 8 Yamashita-cho, Yokohama Dealer of Petroleum.
2. Kind of exchange:	Telegraphic Transfer
Amount:	U. S. Dollar equivalent for ¥1,385,895.00
3. Payee of exchange:	Head Office Standard Vacuum Oil Co. No. 26 Broadway New York City N. Y. Manufacturer and Dealer of petroleum

1186

Plaintiff's Exhibit 22.

4.	Place of payment:	New York City
	Time of payment:	On arrival of exchange.
	Payer:	National City Bank of New York N. Y. Mitsui Bank, New York Yokohama Specie Bank Ltd., New York Hongkong & Shanghai Banking Corp., New York.
1187		National City Bank of New York, New York or Guaranty Trust Co., of New York (In case the exchange be sold by Daiichi Ginko Yokohama Branch)
5.	Spot or Contract: Delivery:	Contract. During August 1941.
6.	Seller of exchange:	Foreign exchange banks at Yokohama National City Bank of New York, Yokohama
1188		Daiichi Ginko, Yokohama Mitsui Bank, Yokohama Yokohama Specie Bank, Yokohama Hongkong Shanghai Banking Corp., Yokohama
7.	Expected time of purchase:	Within thirty days from the date of permission.

8. Purpose of purchase:

The purpose of purchasing foreign exchange is to remit to our Head Office, New York, the balance accrued by deducting the necessary business-expences from the proceeds of sale of the following cargo which is to be purchased by New York Head Office after obtaining this licence and be transported to various oil tanks and warehouses owned by us in Japan.

Plaintiff's Exhibit 22. 1189

Kind of goods:	Petroleum (list of tax for import No. 112-2-OTU-1)
Quantity:	13,199 Kilokitre
Unit of price:	¥105.00 per Kilolitre (Price for consignment) ¥112.00 (C. I. F. Price)
Price:	¥1,385,895.00 (Price for consignment) ¥1,478,288.00 (Price for C. I. F.)
Origin:	Dutch Indies.
Port of shipping:	Various ports in Dutch Indies. 1190
Time of shipping:	Within 30 days after obtaining licence
Port of unloading:	Yokohama, Itozakis, Nagasaki, Osaka, Kobe and other ports in Japan.
Time of arrival of cargo:	Within 60 days after obtaining licence.

Disposition of imported cargo:

The above cargo is to be imported not by order of this branch out as consignment at the discretion of our New York Head Office. And we sell the cargo to our 1191
customers as credit-sale. After collecting proceeds from customers we will send the money to our New York Office, deducting necessary running expences here.

9. Other remarks:

Price, shown in actual invoice for the aforementioned cargo, is ¥112.00 per kilolitre. It exceeds the price for consignment which is the basis of this application. However, we will fix the amount of remittance on basis of consignment-price, i.e. ¥105.00 per kilolitre.

For Standard Vacuum Oil Co.,

C. E. Meyer

F. E. McCorkle.

1192

Plaintiff's Exhibit 23.

(See Opposite ☞)

1193

1194

(349)

No. 139

Yokohama, 13th February, 1941.

Bought From The Yokohama Specie Bank, Limited.

Sold to Standard-Vacuum Oil Co.

Amount.	*Rate.*	*Usance*		*Remittance*
¥487,857.00	23 7/16	T.T.	New York	

Permit No. Kotoku 427 (Feb.8)

For delivery on July, 1941.

No Margin Allowed.

COUTTS AND STEWART
Broker.

(Rear)

NO. 139

COPY

$114,341.48 @23 7/16 ¥ 487,857.00

¥ No. 10. 1000. 8.41

Date.	*Delivered.*	Yen.	*Balance.*	Yen.	*Remarks.*
[illegible]1.41	21,494.29	91,709.00	92,847.19	396,148.00	
Aug.29, "	92,847.19	396,148.00	0	0	

1198

Plaintiff's Exhibit 24.

(See Opposite ☞)

1199



1200

No. 157 (P 401)

Yokohama, 20th March, 1941

Bought From **The Yokohama Specie Bank, Limited.**

Sold to Standard-Vacuum Oil Co.

Amount.	*Rate.*	*Usance*		
$596,885.00	23 7/16	T.T.	New York	*Remittance*

Permit No. Kotoku 1043

For delivery on August, 1941.

No Margin Allowed.

Canty and Stewart
Broker

(rear)

COPY

No. 157

$139,894.92 @ 23 7/16 = 596,885.00

Y. No. 13 1000. P 41

Date.	*Delivered.*	Yen.	*Balance.*	Yen.	*Remarks.*
Aug.29'41	139,894.92	596,885.00	0	0	

1204

Plaintiff's Exhibit 25.

(See Opposite ☞)

1205

1206

COPY (P.4037)

No. 158

Yokohama, 20th March, 1941.

Bought From The Yokohama Specie Bank, Limited.

Sold to The Standard-Vacuum Oil Co.

Amount.	*Rate.*	*Usance*		*Remittance*
¥797,895.00	23 7/16	T.T.	New York	

Permit No. Kotoku 1044

For delivery on August, 1941.

No Margin Allowed.

BRADY & RUEGG
Broker.

(rear)

No. 158.

$187,006.64 @ 23 7/16 ¥ 797,895.00

Date.	*Delivered.*	Yen.	*Balance.*	Yen.	*Remarks.*
Aug. 29 '41	187,006.64	797,895.00	0	0	

1210

Plaintiff's Exhibit 26.

(See Opposite ☞)

1211

1212

No. 159

Yokohama 20th March, 1941.

Bought From The Yokohama Specie Bank, Limited.

Sold to Standard-Vacuum Oil Co.

Amount.	Rate.	Usance	Acceptance / Remittance
¥588,000.00	23 7/16	T.T.	New York

Permit No. Kotoku 1045.

For delivery on August, 1941.

No Margin Allowed

Cootts & Stewart
Broker.

COPY

(Yen)

NO. 155

$137,812.50 @23 7/16 = ¥588,000.00

Date.	Delivered.	Yen	Balance. Yen.	Remarks.
Aug.29'41	137,812.50	588,000.00	0.	

(Exhibit 1 - Page 1)

Form TFE-1 (Revised 8-1-41)
TREASURY DEPARTMENT
OFFICE OF THE SECRETARY

37-767 FC

APPLICATION FOR A LICENSE TO ENGAGE IN A FOREIGN EXCHANGE TRANSACTION, TRANSFER OF CREDIT, PAYMENT, EXPORT OR WITHDRAWAL FROM THE UNITED STATES, OR THE EARMARKING, OF GOLD OR SILVER COIN OR BULLION OR CURRENCY, OR THE TRANSFER, WITHDRAWAL OR EXPORTATION OF, OR DEALING IN, EVIDENCES OF INDEBTEDNESS OR EVIDENCES OF OWNERSHIP OF PROPERTY.*

(To be executed and filed in triplicate with the Federal Reserve Bank for the district or with the Governor or High Commissioner of the territory or possession of the United States in which the applicant resides or has his principal place of business or principal office or agency. If the applicant has no legal residence or principal place of business or principal office or agency in a Federal Reserve district or such territory or possession the application should be filed with the Federal Reserve Bank of New York or the Federal Reserve Bank of San Francisco.)

TO THE SECRETARY OF THE TREASURY
Washington, D. C.

Sir:

I.

In accordance with Executive Order No. 8389 of April 10, 1940, as amended, regulating transactions in foreign exchange, etc., and the Regulations and Rulings issued thereunder, the undersigned hereby applies for a license to execute the transaction described below:

A. (1) The name of the applicant is STANDARD-VACUUM OIL COMPANY (INCORPORATED IN DELAWARE);

(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal ~~place of business~~ office at:

26 BROADWAY (Street), NEW YORK (City), NEW YORK (State), U.S.A. (Country);

(3) Applicant is and has been a citizen of THE UNITED STATES OF AMERICA since JANUARY (Month) 1 (Day) 1934 (Year):

(4) The nationality** of the applicant is THE UNITED STATES OF AMERICA

(5) Since JANUARY 1, 1934 the applicant has been engaged in the business of PETROLEUM (State nature of business)

B. The applicant desires a license in order to:

(State in detail the nature, purpose and amount of the transaction, and the name, address, nationality** and extent of interest of every party, including the applicant, involved or interested in the transaction.)

*All definitions appearing in Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder shall apply to the terms employed herein.

**In the case of a corporation, partnership, or association, give country in which organized and indicate the approximate percentages of stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of such organization owned or controlled, directly or indirectly, by a blocked country or one or more nationals thereof.

---

office
26 BROADWAY (Street), NEW YORK (City), NEW YORK (State), U.S.A. (Country);
(3) Applicant is and has been a citizen of THE UNITED STATES OF AMERICA
since JANUARY (Month) 1 (Day) 1934 (Year):
(4) The nationality** of the applicant is THE UNITED STATES OF AMERICA
(5) Since JANUARY 1, 1934 the applicant has been engaged in the business of PETROLEUM (State nature of business)
B. The applicant desires a license in order to:
(State in detail the nature, purpose and amount of the transaction, and the name, address, nationality** and extent of interest of every party, including the applicant, involved or interested in the transaction.)
*All definitions appearing in Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder shall apply to the terms employed herein.
**In the case of a corporation, partnership, or association, give country in which organized and indicate the approximate percentages of stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of such organization owned or controlled, directly or indirectly, by a blocked country or one or more nationals thereof.

(a) Debit and credit $557,561.25 to accounts on its books with its Yokohama, Japan, branch office in order to record a remittance arranged in August 1941 by said branch through the Yokohama Specie Bank, New York Agency. The remittance was never paid to the Applicant due to inability to secure a license from the United States Treasury.

(b) Write off as a bad debit $557,561.25 in its account with its Yokohama branch office in accordance with tax regulation, Section 23 (K) (1) of U.S. Internal Revenue Code as amended, being the remittance outlined in (a) above, never received by the Applicant.

D

Applicant's No. 37-767

FOURTH COPY

1216

Defendant's Exhibit A.

A

INCOMING CABLEGRAM

RECEIVED	EEB	EJK	MKW
JUL 28 1941	KFC	WSL	JDM
TREAS DEPT.	LVC	EMM	FLS
ANS'D BY	TJD	BWP	
CABLE	WFD	CAT	
ANS'D BY	GEE	AGV	
LETTER	PJG	RFV	

NO. 50 REC'D 11 10 AM DISTR'D 11 45 A

FROM YOKOHAMA
TO LC REFINED NEW YORK
1217 DATE JUL 28/41

WHILE APPLICATION NEW EXCHANGE REGULATIONS FREEZING ASSETS AMERICAN CONCERNS NOT CLEAR WE VERBALLY INFORMED BY AUTHORITIES ALL EXCHANGE CONTRACTS ARE CANCELLED AND NEW APPLICATIONS MUST BE FILED IF WE WISH TO REINSTATE CONTRACTS BUT NO ASSURANCE GIVEN THESE WILL BE APPROVED WE ARE SUBMITTING APPLICATIONS AND WILL REPORT DETAILS AS SITUATION BECOMES CLEARER IN MEANTIME ARE FOLLOWING QUESTION CLOSELY YOUR 55 MITSUI TELEGRAPHING THEIR NEW YORK OFFICE TO ATTEMPT GETTING
1218 AMERICAN AUTHORITIES PERMISSION TEIYO CARGO (STOP) WITHOUT SUCH PERMIT YOKOHAMA SPECIE BANK CANNOT ACCEPT BILL OF EXCHANGE ALTHOUGH LETTER CREDIT ESTABLISHED JULY 26TH HOPE YOU CAN ASSIST MITSUI WITH AUTHORITIES TO SECURE NECESSARY PERMISSION

STANDARDVACUUM

cc Mr. J. Parkinson

Defendant's Exhibit B. 1219

Journal Voucher No. M 45

STANDARD - VACUUM OIL CO.

Main Ledger

Date December 31, 1941

A. H. B.
Maker

B. V. L.
Examiner 1220

M. T.
Approval

To write off as a bad debt a remittance arranged by Yokohama branch office August 29, 1941 through Yokohama Specie Bank Ltd., New York Agency, uncollectible because license to permit the New York Agency to make payment was denied by U. S. Treasury, see Office Journal Voucher M-1544.

See voucher M-22 Dec. 1944 reversing P. & L. and setting up claim. 1221

Debit		Credit	
General Profit & Loss	557,561.25	Machine Control No. 1	557,561.25
Total	557,561.25	Total	557,561.25

1222

Defendant's Exhibit C.

(See Opposite ☞)

1223

1224

(Exh. D,- p. 2)

II.

C. The applicant represents and warrants that it has no knowledge that any party other than those mentioned in item B above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein. If there are any exceptions, note them below.

D. The applicant represents and warrants that all the facts herein stated are correct and true and that he does not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein. (Attach hereto schedules of any additional material information.)

E. The applicant represents and warrants that he has complied, and agrees that he will comply, in all respects, with Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder, and with any and all licenses issued to the applicant pursuant thereto, and that, with respect to the transaction here involved, no other application of the undersigned for a license has been filed or is pending, except as follows:

STANDARD-VACUUM OIL COMPANY
(Applicant)

By COPY ORIGINAL SIGNED R. I. BROUGHAM
R. I. BROUGHAM, ASSISTANT TREASURER

State of NEW YORK }
County of NEW YORK } ss :

I, R. I. BROUGHAM, on oath, depose and say that I am ASSISTANT TREASURER
(State relationship to applicant)

of STANDARD-VACUUM OIL COMPANY, which is the applicant in the above application
(Name of Applicant)

for a license; and that I am duly authorized to make the foregoing application on behalf of the applicant: that I have personal knowledge of the facts as set forth in said application and know the same to be true and accurate; and that I do not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein.

COPY ORIGINAL SIGNED R. I. BROUGHAM
(Signature of affiant)

26 BROADWAY, NEW YORK, NEW YORK.
(Address)

Subscribed and sworn to before me this day of JUN 26 1942, 194

(Notarial Seal)

ROBERT HAIR
NOTARY PUBLIC, Bronx County
(Officer administering oath)
Bronx Co. Clerk's No. 10, Register's No. 2H44
Certificates filed in
New York Co. Clerk's No. 34, Register's No. 4H26

My commission expires

(Name of Applicant)

for a license; and that I am duly authorized to make the foregoing application on behalf of the applicant: that I have personal knowledge of the facts as set forth in said application and know the same to be true and accurate; and that I do not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein.

COPY ORIGINAL SIGNED R. I. BROUGHAM
(Signature of affiant)

26 BROADWAY, NEW YORK, NEW YORK.
(Address)

Subscribed and sworn to before me this day of JUN 26 1942, 194

(Notarial Seal)

ROBERT HAIR
NOTARY PUBLIC, Bronx County
(Officer administering oath)
Bronx Co. Clerk's No. 10, Register's No. 2H44
Certificates filed in
New York Co. Clerk's No. 34, Register's No. 4H26

RECOMMENDATION OF FEDERAL RESERVE BANK March 30th, 1944

TO THE SECRETARY OF THE TREASURY:

The above application is forwarded to the Secretary of the Treasury with the recommendation that a license should be (granted in the following amount).
(denied).

Remarks:

Respectfully,
FEDERAL RESERVE BANK OF NEW YORK

per pro

NOTE: If this application covers gold in any form the provisions of the Provisional Regulations issued under the Gold Reserve Act of 1934 must also be complied with.

Copies of this form may be obtained, on request, at any Federal Reserve Bank, mint or assay office, or the Treasury Department, Washington, D. C.

(Exh. D- Page 3)

Form TFEL-1 (Revised 8-1-41)
TREASURY DEPARTMENT
Office of the Secretary

License No. N. Y 428343-H
Date: July 10, 1942

LICENSE

(GRANTED UNDER THE AUTHORITY OF EXECUTIVE ORDER NO. 8389 OF APRIL 10, 1940, AS AMENDED, AND THE REGULATIONS AND RULINGS ISSUED THEREUNDER)

RECEIVED
JUL 13 1942
TREASURER

(SV-767)

To Standard-Vacuum Oil Company
Name of Licensee
26 Broadway, New York, New York
Address of Licensee

Sirs:

1. Pursuant to your application of June 26, 1942 the following transaction is hereby licensed:

Effect the specified debit and credit entries each in the amount of $557,561.25 to the proper blocked accounts on your books in the name of your Yokohama, Japan, branch office.

Only in so far as the Order is involved, make appropriate entries on your books to the proper blocked accounts in the name of your Yokohama, Japan, branch office, to write off as a bad debit $557,561.25, as specified.

* * * * * * * *

cc: Mr. Vandenpaal
Att. Messrs. Beach &
Buetmeyer

2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, among others, that you will comply in all respects with Executive Order No. 8389 of April 10, 1940, as amended, the Regulations and Rulings issued thereunder and the terms of this license.

3. The licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank through which the license was issued, the

* * * * * * * *

cc: Mr. Vandenpaal
Att. Messrs. Beach &
Buetmeyer

2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, among others, that you will comply in all respects with Executive Order No. 8389 of April 10, 1940, as amended, the Regulations and Rulings issued thereunder and the terms of this license.

3. The licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank through which the license was issued, the Postmaster at the place of mailing or the Collector of Customs at the port of exportation.

4. This license expires 30 days from the date of its issuance, is not transferable, is subject to the provisions of Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder and may be revoked or modified at any time in the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

Issued by direction and on behalf of the Secretary of the Treasury:

FEDERAL RESERVE BANK OF NEW YORK

per pro.....

The Act of October 6, 1917, as amended, provides in part as follows:

"*** Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both."

NOTE: If this license covers gold in any form the provisions of the Provisional Regulations issued under the Gold Reserve Act of 1934 must also be complied with.

ORIGINAL

(p.409)

~~Auditor's~~ **OFFICE JOURNAL NO.** M 1541 court

(L. 613)

FORM D-302

DATE December 31 1941

	FOLIO	CODE NO.	AMOUNT DEBIT	AMOUNT CREDIT
		1		
General P. L. - Bad debts	No 28	aa 328 0	557 561 25	
Yokohama Resistance Fc	A 28	4270		557 561 25
		aa 337	1 00	
To write off as a Bad debt a remittance arranged by Yokohama Branch office Aug. 29, 1941 thru Yokohama Specie Bank, Ltd, New York Agency, uncollected because License to permit the New York Agency to make payment denied by U. S. Treasury. NY 42 8 343 M. 7/10/42. Reversed by Voucher N-577- DEC- 1944 (Claim set up) License applied for 6/19/44				

PREPARED [signature] DATE 6/10/42 CHECKED [signature] APPROVED A. F. Vanderpoel

1228

Defendant's Exhibit D.

(See Opposite ☞)

1229

1230

1258 *Defendant's Exhibit F.*

branch office was not able to make August remittances when it normally would have done so, namely, on or about August 1, 1941. By cable dated August 27, 1941 from its said Yokohama branch office, however, Applicant was advised to the effect that the Japanese authorities have now authorized the remittance which would normally be made during the month of August, in the amount of $557,561.25, U. S. currency, which is the equivalent of Japanese ¥2,378,928, mentioned above, converted at the rate of exchange of .23-7/16. On
1259 August 29, 1941, namely, the date of this Application, Applicant was advised by the Yokohama Specie Bank, New York Agency, that it had received by cable the relevant payment instructions from the Yokohama Specie Bank, Yokohama, Japan, and that it will make payment to Applicant of the amount of the remittance in question from funds on deposit with the Guaranty Trust Company of New York, provided an appropriate license or licenses are received.

Further information with respect to the position of Applicant's Yokohama branch office re-
1260 garding remittances is as follows:

Said Yokohama branch office is supplied with kerosene, low-grade motor gasoline and diesel oil from Netherlands East Indies sources, while the other petroleum products marketed by said Yokohama branch office, consisting of lubricating oil, grease and petrolatum, are supplied from other sources, principally the United States of America. Remittances to Applicant by Applicant's Yokohama branch office against petroleum products imported by said branch office into Japan are made by it in accordance with remittance permits issued by and exchange contracts ap-

1261

proved by the Japan authorities. As above indicated, these remittance permits were revoked or suspended by the Japanese authorities on or about July 26, 1941.

Applicant has received from its Yokohama branch office a report in respect of the status of remittance permits as of May 31, 1941, which is the latest report on the subject received by the Applicant from its Yokohama branch office. This report indicates that as of May 31, 1941, the total amount to be remitted to Applicant by its Yokohama branch office was ¥9,954,093, the United 1262
States dollar equivalent of which at the exchange rate of .23-7/16 is $2,332,990.55. Since May 31, 1941, Applicant has received from its Yokohama branch office remittances totaling $1,176,715.04, consisting of $350,923.35 received on June 3, 1941, and $825,791.69 received on July 1, 1941. Consequently, of the amount as of May 31, 1941, to be remitted, a balance of $1,156,275.51 remains.

Applicant is unable to determine accurately the amount to be remitted by the Yokohama branch office as of the present date. There have been no shipments of petroleum products to the Yokohama 1263
branch office since May 31, 1941, although there was one shipment from the Netherlands East Indies which arrived in Japan on or about June 4, 1941, and three shipments from the United States during the month of May which would not have been received by the Yokohama branch office until after May 31, 1941. Applicant is unable to determine at the present date from its records whether the values of these last mentioned four shipments were taken into consideration by its Yokohama branch office for the purpose of showing its above-mentioned remittance position report

MEMORANDUM

(Exh. D- Page 4)

June 16, 1942

JV 761

RECEIVED
JUN 17 1942
TREASURER

Mr. R. I. Brougham
Room 911
Building

Dear Sir:

Kindly apply for a license to effect the following transaction:

Debit Yokohama Remittance Acct.	$557,561.25	
Credit Yokohama Office Acct.		$557,561.25

The above entry represents an amount remitted by Yokohama in August 1941 through the Yokohama Specie Bank which has not been received from the bank, but which has been reported by Yokohama on their August 1941 Cash and Journal Sheets.

Yours very truly,

A. G. Vanderpool

A. G. Vanderpool
Accounting Department

RWWB/ed

MEMORANDUM

June 19, 1942

A. G. Vanderpool
Accounting Department

RWWB/ed

MEMORANDUM

June 19, 1942

JV-761

Mr. E. J. Kenney
Room 911
B u i l d i n g

Application for License

Attention: Mr. R. I. Brougham

Dear Sir:

Please apply for a license permitting us to make the following entries on the books of the applicant.

Debit:	General Profit and Loss a/c Bad Debts	$557,561.25
Credit:	Yokohama Remittance Account	$557,561.25

The above entries cover the writing off as a Bad Debt, in accordance with Tax Regulation Section 23 (K) (1) of U.S. Internal Revenue Code as amended, a remittance made by applicant's branch office, in Yokohama, but not received by applicant in New York.

Very truly yours,

A. G. Vanderpool

Accounting Department

AHB/mps

1234

Defendant's Exhibit E.

FORM TFE-1 (Revised 8-1-41)

TREASURY DEPARTMENT
OFFICE OF THE SECRETARY

SV-245

APPLICATION FOR A LICENSE TO ENGAGE IN A FOREIGN EXCHANGE TRANSACTION, TRANSFER OF CREDIT, PAYMENT, EXPORT OR WITHDRAWAL FROM THE
1235 UNITED STATES, OR THE EARMARKING, OF GOLD OR SILVER COIN OR BULLION OR CURRENCY, OR THE TRANSFER, WITHDRAWAL OR EXPORTATION OF, OR DEALING IN, EVIDENCES OF INDEBTEDNESS OR EVIDENCES OF OWNERSHIP OF PROPERTY.*

(To be executed and filed in triplicate with the Federal Reserve Bank for the district or with the Governor or High Commissioner of the territory or possession of the United States in which the applicant resides or has his principal place of business or principal office or agency. If the ap-
1236 plicant has no legal residence or principal place of business or principal office or agency in a Federal Reserve district or such territory or possession the application should be filed with the Federal Reserve Bank of New York or the Federal Reserve Bank of San Francisco.)

---

*All definitions appearing in Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder shall apply to the terms employed herein.

1264 *Defendant's Exhibit F.*

as of May 31, 1941. Inasmuch as these shipments were in transit to Japan on such date, it is possible that the Yokohama branch office took them into account in reporting its remittance position as of such date. Applicant believes, however, that since such four shipments did not arrive in Japan until sometime subsequent to May 31, 1941, the amount of $1,156,275.51 previously referred to as being the balance of the amount reported as of such date to be remitted does not include the value of such shipments. If the latter should be the case, then
1265 such amount of $1,156,275.51 should be increased by the remittable values of such four shipments in order correctly to estimate the amount which at the present date is to be remitted to Applicant by its Yokohama branch office. Applicant has estimated the values of such shipments to be remitted to be $771,244.26, which amount when added to the aforesaid amount of $1,156,275.51 would make an estimated total to be remitted from the Yokohama branch office as of the present date of $1,927,519.77, which, of course, includes the amount of $557,561.25 which is the subject of this Application.

1266 D. The applicant represents and warrants that it has no knowledge that any ~~no~~ party other than those mentioned in item C above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein. If there are any exceptions, note them below.

E. The applicant represents and warrants that all the facts herein stated are correct and true and that he does not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein.

Defendant's Exhibit E. 1237

TO THE SECRETARY OF THE TREASURY
Washington, D. C.

(NY334372)

Sir:

In acordance with Executive Order No. 8389 of April 10, 1940, as amended, regulating transactions in foreign exchange, etc., and the Regulations and Rulings issued thereunder, the undersigned hereby applies for a license to execute the transaction described below:

A. (1) The name of the applicant is STANDARD-VACUUM OIL COMPANY (INCORPORATED IN DELAWARE); 1238

(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal office at: 26 Broadway, New York, New York, United States.

(3) Applicant is and has been a citizen of the United States of America since January 1, 1934:

(4) The nationality** of the applicant is the United States of America.

1239

(5) Since January 1, 1934 the applicant has been engaged in the business of Petroleum.

B. The applicant desires a license in order to:

(State in detail the nature, purpose and amount of the transaction, and the name, address, nationality** and extent of interest of every party, in-

**In the case of a corporation, partnership, or association, give country in which organized and indicate the approximate percentages of stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of such organization owned or controlled, directly or indirectly, by a blocked country or one or more nationals thereof.

Defendant's Exhibit F. 1267

(Attach hereto schedules of any additional material information.)

F. The applicant represents and warrants that he has complied, and agrees that he will comply, in all respects, with the Executive Order No. 6560 of January 15, 1934, as amended, and the regulations issued thereunder, and with any and all licenses issued to the applicant pursuant thereto, and that, with respect to the transaction here involved, no other application of the undersigned for a license has been filed or is pending. 1268

STANDARD-VACUUM OIL COMPANY
(Applicant)

By E. J. KENNEY
E. J. Kenney, Assistant Treasurer

(Verified by E. J. Kenney on August 29, 1941.)

1269

1270 **Defendant's Exhibit G.**

FEDERAL RESERVE BANK
OF NEW YORK

October 15, 1941

Standard-Vacuum Oil Company
26 Broadway
New York, New York

Dear Sirs:

1271 Reference is made to your application, serial number SV-70, (NY-235383), filed by you for a license under Executive Order No. 8389, as amended.

The transaction in which you propose to engage is one involving a question of basic policy which is receiving the active consideration of the Treasury Department. When a decision thereon has been reached and action is taken on your application, you will be promptly notified.

Very truly yours,

1272 per pro M. CULLEANDEAN
Foreign Property
Control Department

1240 cluding the applicant, involved or interested in the transaction.)

To permit Yokohama Specie Bank, Ltd., New York Agency, 120 Broadway, New York, New York (including such authority as may be administering or liquidating the affairs of the Agency) to pay to Applicant the sum of $557,561.25, being the proceeds of a remittance made by Applicant's branch office located in Yokohama, Japan, and to permit the payment to be made to the Applicant out of the funds which said New York Agency has
1241 on deposit with New York banks. Upon the payment of said sum to the Applicant it will credit a like amount to an account on its books maintained in respect of the operation of said branch office and the Yokohama Specie Bank, Ltd., New York Agency, will debit in respect of the payment the account maintained on its books with the Yokohama Specie Bank, Ltd., Yokohama, Japan.

As stated in Applicant's application No. SV-70 (Federal Reserve Bank No. NY 235383) dated August 29, 1941, the remittance referred to was a remittance made from funds of Applicant's Yoko-
1242 hama branch office arising from its normal business of marketing petroleum products in Japan. Such remittance was arranged by said branch office during February and March 1941 and represented the net sales proceeds of petroleum products shipped to Japan about that time, that is early in 1941, and it covered the August exchange quota allotted by the Japanese Authorities to Applicant's Yokohama branch office and for which said branch office paid into the Yokohama Specie Bank, Ltd., Yokohama, Japan, Yen 2,378,928. Applicant was advised on August 27, 1941 by its Yokohama branch office that such remittance had been made

Defendant's Exhibit E. 1243

and on August 29, 1941, Yokohama Specie Bank, Ltd., New York Agency, advised the Applicant that it had been instructed by its Yokohama office to make payment of $557,561.25 to Applicant and was awaiting Applicant's reply that the requisite United States Treasury license had been obtained to permit the Agency to make this payment.

Applicant thereupon prepared and filed its above-mentioned application (NY 235383 dated August 29, 1941) to authorize the payment of such sum to it. By a letter dated October 15, 1244
1941, Applicant was advised by the Federal Reserve Bank that the transaction involved a question of basic policy receiving the active consideration of the Treasury Department. In view of the existing state of war between the United States and the Japanese Empire it seems reasonable to assume that uncertainties concerning the relations between this country and Japan have ended and that questions of policy covering the payment by Japanese of their debts in the United States have been resolved. Accordingly, Applicant respectfully requests further consideration of its appli- 1245
cation to receive the above-mentioned remittance of $557,561.25, and in this connection points out, as heretofore indicated, that it is in the position of having contracted, through its Yokohama branch office, with the Yokohama Specie Bank, Yokohama, for the payment of $557,561.25 to it in New York and that the consideration therefore, namely, Yen 2,378,928, the net proceeds of the actual sale by Applicant of petroleum products, has been paid by Applicant's Yokohama branch office to Yokohama Specie Bank in Yokohama. Applicant has been advised by reliable sources that there are

1273

Defendant's Exhibit H.

NY-334372-C

FEDERAL RESERVE BANK
OF NEW YORK

Fiscal Agent of the United States

January 13, 1942

Standard-Vacuum Oil Company
26 Broadway
New York, New York

1274

Gentlemen:

You are hereby advised that your application bearing serial No. SV-245 made pursuant to Executive Order No. 8389, as amended, is denied in accordance with instructions of the Treasury Department.

Very truly yours,

per pro M. CULLEANDEAN
Foreign Property
Control Department

1275

1276

Defendant's Exhibit I.

N Y 235383-C

FEDERAL RESERVE BANK
OF NEW YORK

Fiscal Agent of the United States

January 14, 1942

Standard-Vacuum Oil Company
(Incorporated in Delaware)
1277 26 Broadway
New York, New York

Dear Sirs:

You are hereby advised that your application bearing serial #SV-70, made pursuant to Executive Order No. 8389, as amended, is denied in accordance with instructions of the Treasury Department.

Very truly yours,

1278

per pro M. CULLEANDEAN
Foreign Property
Control Department

pr/hk

1246 *Defendant's Exhibit E.*

adequate funds in New York of the Yokohama Specie Bank, New York Agency, to meet the outstanding liabilities of that Agency and that the payment of the sum of $557,561.25 to Applicant would not prejudice the interests of other domestic creditors of that Agency.

C. The applicant represents and warrants that it has no knowledge that any party other than those mentioned in item B above has any interest, direct or indirect, in the transaction or tranactions for
1247 which a license is applied for herein. If there are any exceptions, note them below.

D. The applicant represents and warrants that all the facts herein stated are correct and true and that he does not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein. (Attach hereto schedules of any additional material information.)

E. The applicant represents and warrants that he has complied, and agrees that he will comply,
1248 in all respects, with Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder, and with any and all licenses issued to the applicant pursuant thereto, and that, with respect to the transaction here involved, no other application of the undersigned for a license has been filed or is pending, except as follows:

STANDARD-VACUUM OIL COMPANY,
Applicant.

By E. T. SINGER,
E. T. Singer, Treasurer.

(Verified by E. T. Singer on December 29, 1941.)

Defendant's Exhibit J.

1279

UNITED STATES OF AMERICA

OFFICE OF ALIEN PROPERTY CUSTODIAN

Notice of Claim Arising as a Result of Vesting Order.

Received 4/15/44 Recorded 4/15/44 Processed 4/15/44 Referred ..... Action	Do Not Write in These Blocks	Claim No. 2012 915-1255 V. O. No. 1324 & 1501 Date Account No. 39-6206 in the name of The Yokohama Specie Bank, Ltd. Tokyo, Japan.

1280

THESE INSTRUCTIONS SHOULD BE READ CAREFULLY BEFORE FILLING OUT THIS FORM.

A. The use of Form APC-1 is expressly limited to persons (1) who assert a claim arising as a result of a specific vesting order and (2) who are permitted to file a notice of claim pursuant to the provisions of such vesting order or pursuant to regulations promulgated by the Office of Alien Property Custodian.

1281

B. This form must be executed and filed in triplicate with the Office of Alien Property Custodian, Washington, D. C. The original shall be executed under oath before an officer authorized to administer oaths, or if executed outside of the United States, before a diplomatic or consular officer of the United States.

C. If the space provided is insufficient to furnish information required herein, utilize properly identified schedules attached as exhibits.

Defendant's Exhibit F.

FORM TFE-1 (Revised 8-1-41)
TREASURY DEPARTMENT
OFFICE OF THE SECRETARY

SV-70

APPLICATION FOR A LICENSE TO ENGAGE IN A FOREIGN EXCHANGE TRANSACTION, TRANSFER OF CREDIT, PAYMENT, EXPORT OR WITHDRAWAL FROM THE UNITED STATES, OR THE EARMARKING, OF GOLD OR SILVER COIN OR BULLION OR CURRENCY, OR THE TRANSFER, WITHDRAWAL, OR EXPORTATION OF, OR DEALING IN, EVIDENCES OF INDEBTEDNESS OR EVIDENCES OF OWNERSHIP OF PROPERTY.

(To be executed and filed in duplicate with the Federal Reserve Bank for the district or with the Governor or High Commissioner of the territory or possession of the United States in which the applicant resides or has his principal place of business or principal office or agency. If the applicant has no legal residence or principal place of business or principal office or agency in a Federal Reserve district or such territory or possession the application should be filed with the Federal Reserve Bank of New York.)

TO THE SECRETARY OF THE TREASURY
Washington, D. C.

NY235383

Sir:

I.

In accordance with Executive Order No. 6560 of January 15, 1934, as amended, relative to transactions in foreign exchange, transfers of credit, and the export of coin and currency, and the regulations issued thereunder, the undersigned hereby

1282 *Defendant's Exhibit J.*

D. If claimant has no knowledge as to any particular information required, so indicate by inserting the term "No knowledge" in blank space.

E. Wherever citizenship or subject status is required to be specified herein, (1) in the case of a partnership, the citizenship or subject status of all partners must be indicated; (2) in the case of a corporation, association, or other organization, the state, country or other jurisdiction under the laws of which said corporation, association or
1283 other organization was organized must be indicated as well as the principal place of doing business; (3) in the case of a stateless person, so indicate.

F. The term "person" as used in this form means an individual, partnership, corporation, association, or other organization or body politic, and the plural as well as the singular thereof.

G. Hearing on the claim, if the notice thereof is properly executed and if full and complete information is given, will be granted in accordance with the rules and regulations of the Custodian only
1284 after notice of the place, date and time of such hearing is mailed by the Custodian to the person specified in Section numbered "2" of this form, at the address there given.

I hereby certify that the within is a true and correct copy of the original paper on file in this office.

JAMES E. MARKHAM
Alien Property Custodian

By: LOYOLA M. BLANTON
Assistant Secretary for Records
Office of Alien Property Custodian
August 8, 1946.

(SEAL)

1252 *Defendant's Exhibit F.*

applies for a license to execute the transaction described below:

A. The name of the applicant is STANDARD-VACUUM OIL COMPANY (INCORPORATED IN DELAWARE), the applicant's residence or principal office is located at 26 BROADWAY, NEW YORK, NEW YORK, and the citizenship* of the applicant is The United States of America.

B. The applicant has since JANUARY 1, 1934 been engaged in the business of Petroleum.

1253

C. The applicant desires a license in order to:

(State in detail the nature, purpose and amount of the transaction, and the name, address, nationality* and extent of interest of every party, including the applicant, involved or interested in the transaction.)

Receive from Yokohama Specie Bank, New York Agency, 120 Broadway, New York, New York, the sum of Five Hundred and Fifty-Seven Thousand Five Hundred Sixty-One dollars and Twenty-Five cents ($557,561.25), being the pro-
1254 ceeds of a remittance made by Applicant's branch office located in Yokohama, Japan, and to credit therefor accounts carried on the books of the Applicant at its New York office in respect of operations of said Yokohama branch office.

Applicant respectfully requests that the license issued pursuant to this Application authorize (1) the Yokohama Specie Bank, New York Agency, to pay the amount of such remittance out of funds such Agency has on deposit with the Guaranty

---

*In the case of a corporation give country of incorporation, countries in which corporation is doing business and also predominant citizenship of stockholders.

Defendant's Exhibit J. 1285

TO THE ALIEN PROPERTY CUSTODIAN
Washington, D. C.

The undersigned, hereinafter referred to as "claimant", desiring to take advantage of the procedure established by the Office of Alien Property Custodian for the filing of claims arising as a result of a specific vesting order, hereby gives you notice of claim and requests a hearing thereon:

1. a. Name of claimant: Eugene T. Singer.

b. Address of claimant: 26 Broadway, New 1286
York 4, N. Y.

2. Notices or communications with respect to this claim are to be sent to: Cravath, Swaine & Moore, whose address is: 15 Broad Street, New York 5, N. Y.

3. a. Claimant is a citizen or subject (see Instruction E) of: the United States.

b. Has claimant been a citizen or subject of another country at any time since April 8, 1940? No. If so, state which country or countries: .....

c. Specify all countries in which claimant has 1287
resided at any time since April 8, 1940 (if claimant is a partnership state the countries in which all partners have resided; if claimant is a corporation, association or other organization, specify all principal places of doing business): United States of America.

d. Has claimant or claimant's property at any time been subjected to "freezing controls" pursuant to Executive Order No. 8389, as amended, for the reason that claimant was or is a "national" of a foreign country designated in said Executive Order? No. If answer is "yes", list all such

1255

Trust Company of New York, 140 Broadway, New York, New York, and to debit in respect thereof the account maintained on the books of the Yokohama Specie Bank, New York Agency, in the name of the Yokohama Specie Bank, Yokohama, Japan, and (2) the Guaranty Trust Company of New York to make payment to Applicant of said amount and to debit in respect thereof the blocked account maintained on its books in the name of the Yokohama Specie Bank, New York Agency.

1256

Applicant is a Delaware corporation and it and its predecessor companies have for more than forty (40) years been engaged in the business of marketing petroleum products in various Far Eastern areas, including Japan, where Applicant's business is conducted through a branch office located at Yokohama.

The remittance referred to above is a remittance made from funds of Applicant's Yokohama branch office arising from its business of marketing petroleum products in Japan and consists of current collections of proceeds of sales of merchandise less current local operating expenses.

1257

Prior to July 26, 1941, Applicant's Yokohama branch office had received permits from the Japanese authorities authorizing it to remit during the month of August, 1941, amounts totaling ¥2,378,928 against kerosene, low-grade motor gasoline and lubricating oil imported prior to July 26, 1941, by said Yokohama branch office as stock for resale by it in the normal course of its marketing business in Japan. On or about July 26, 1941, restrictions were imposed by the Japanese authorities on American funds in Japan and all outstanding permits to remit and exchange contracts were revoked or suspended. As a result said Yokohama

1288 *Defendant's Exhibit J.*

foreign countries of which claimant has been deemed to be a "national": .....

4. a. Describe accurately the vested property with respect to which this notice of claim is filed: See Exhibit A annexed hereto.

b. Immediately before said property was vested in the Alien Property Custodian, it was in the possession of the following person (see Instruction F): Superintendent of Banks of the State of New York, Albany, New York; Superintendent of
1289 Banks of the State of California, San Francisco, California; Yokohama Specie Bank, Ltd., Seattle branch, Seattle, Washington; and Yokohama Specie Bank, Ltd., Honolulu Branch, Honolulu, Hawaii whose address then was:

c. Said property was vested in the Alien Property Custodian by Vesting Order Number Exhibit B dated Exhibit B, 19.....

5. Specify the nature of the claim of which notice is hereby given. (Give full and precise information as to the basis for the claim, the
1290 amount thereof and all pertinent circumstances upon which claimant relies. If necessary to indicate the nature of the claim, pertinent documents, properly identified, may be attached as exhibits.) Claim for unpaid telegraphic transfer from Yokohama Specie Bank, Ltd., Yokohama, Japan, of $557,561.25 to Standard-Vacuum Oil Company, a Delaware corporation. See Exhibit C annexed hereto.

6. Claimant represents and alleges that the claim of which notice is hereby given, is in all respects bona fide and that there are no set-offs, counterclaims or defenses against said claim, except as are specified below with particularity: none; that this notice of claim is not filed in collu-

sion with any person for the purpose of circumventing or avoiding the terms and provisions of the Trading with the Enemy Act, as amended (including, but not limited to, the amendment thereof by Title III of the First War Powers Act, 1941), or any rules or regulations issued pursuant thereto; and that claimant knows of no person (see Instruction F) whatsoever, except as specified below with particularity, who has any interest whatsoever, direct or indirect, legal, equitable or beneficial, in the claim of which notice is hereby given, or in the proceeds thereof: 1292

e	Address	Citizenship or Subject Status (see Instruction E)	Nature of Interest
acuum ny	26 Broadway New York 4, N. Y.	Delaware corporation—principal place of doing business—United States	Entire beneficial interest

Dated this 12th day of April, 1944.

E. T. Singer
Claimant

If claimant is an individual, his signature alone is sufficient unless the notice of claim is executed by a duly authorized representative. Partnerships must sign by a member or duly authorized representative. Corporations, associations or other organizations or bodies politic must sign by a duly authorized officer or other duly authorized representative and must affix the corporate or official seal, unless there is no such seal, in which case such fact must be indicated. Any person executing this form in a representative capacity must indicate in what capacity he signs and (except where such person is a member of a partnership or officer of a corporation) must attach a properly identified and verified copy of his power of attorney or other evidence of authority. 1293

(Verified by Eugene T. Singer, April 12, 1944.)

1294 *Defendant's Exhibit J.*

Exhibit A.

1. The excess proceeds of the business and property in the State of New York of The Yokohama Specie Bank, Ltd., in the possession of the Superintendent of Banks of the said State or which may come into his possession by virtue of the Banking Law of said State including but not limited to the excess proceeds of all assets of any nature whatsoever owned or controlled by or payable or deliverable to or held on behalf of or on
1295 the account of or owing to the New York agency of said The Yokohama Specie Bank, Ltd., remaining after the payment of the claims of the creditors entitled to payment of such claims pursuant to Section 606, subdivision 4 (a) of the said Banking Law such as but not limited to cash of said agency on deposit with various credit institutions, accounts and bills receivable owing to said agency by individuals, partnerships, corporations, etc., and claims of said agency of any nature against individuals, partnerships, corporations, etc.;

1296 2. The excess of the proceeds of the business and property of the California Branch of The Yokohama Specie Bank, Ltd., in possession of the Superintendent of Banks of the State of California, acting in his capacity as Superintendent of Banks, Liquidator and/or Conservator, or which may hereafter come into his possession in any such capacity under and by virtue of the Banking Law of the State of California, owned or controlled by or payable or deliverable to or held on behalf of or on account of or owing to the California Branch remaining after payment of the claims of the creditors of the California Branch

1297

accepted, allowed or established in accordance with the Banking Law of the State of California, arising out of the business of the California Branch transacted in the State of California, including the property of the Los Angeles Branch of said Bank;

3. All property of any nature whatsoever subject to the jurisdiction of the United States and owned or controlled by, payable or deliverable to, or held on behalf of, or on account of or owing to the Seattle Branch of The Yokohama Specie Bank, Ltd., Seattle, Washington; and

1298

4. All property of any nature whatsoever subject to the jurisdiction of the United States and owned or controlled by, payable or deliverable to, or held on behalf of, or on account of or owing to the Honolulu Branch of The Yokohama Specie Bank, Ltd., Honolulu, Hawaii.

Exhibit B.

C. Said property was vested in the Alien Property Custodian by Vesting Orders Numbered 915,1255, 1324 and 1501 dated February 15, 1943; April 20, 1943, April 22, 1943 and May 18, 1943, respectively.

1299

Exhibit C.

5. NATURE OF CLAIM OF WHICH NOTICE IS HEREBY GIVEN.

For several years prior to and on December 7, 1941, Standard-Vacuum Oil Company maintained

1300 *Defendant's Exhibit J.*

a branch office at Yokohama, Japan, which office maintained a deposit account with the head office of Yokohama Specie Bank, Ltd., in Yokohama, Japan.

Prior to August, 1941, it had been the custom and practice for Standard-Vacuum through its Yokohama office, to purchase dollars from Yokohama Specie in Japan for transfer by cable to Standard-Vacuum in New York. According to such custom and practice Yokohama-Specie effected such transfers by cabling its New York
1301 agency located in New York City to pay Standard-Vacuum the amount of dollars directed to be transmitted and the agency, upon receipt of such telegraphic transfer, would immediately make payment by check to Standard-Vacuum out of the funds of the agency in New York.

Pursuant to permission granted by the Japanese authorities, certain contracts were made in Yokohama in February and March, 1941, between Standard-Vacuum and Yokohama-Specie providing for the following telegraphic transfers to be
1302 made to Standard-Vacuum in New York during the month of August, 1941:

On or about February 13, 1941 23-7/16 U. S. $92,847.19 at exchange ¥ 396,148.
On or about March 20, 1941 23-7/16 U. S. $139,894.92 at exchange ¥ 596,885.
On or about March 20, 1941 23-7/16 U. S. $187,006.64 at exchange ¥ 797,895.
On or about March 20, 1941 23-7/16 U. S. $137,812.50 at exchange ¥ 588,000.
Total U. S. $557,561.25 ¥ 2,378,928.

On or about July 28, 1941, restrictions were imposed by the Japanese authorities upon American

1303

funds in Japan and all outstanding permits were frozen. As a result, Standard-Vacuum's Yokohama office was not able to make the remittances which it ordinarily would have made during the first part of August. Subsequently, however, and on or about August 27, 1941, permits from the Japanese authorities, to make the remittances pursuant to the aforesaid contracts were received by Standard-Vacuum.

On or about August 27, 1941, Standard-Vacuum through its Yokohama office delivered its check in the amount of ¥2,378,928 to Yokohama Specie with instructions to pay Standard-Vacuum in New York $557,561.25 and the Bank cabled its agency in New York to pay said amount to Standard-Vacuum. Yokohama Specie charged the amount of said check to Standard-Vacuum's Yokohama account with it and said account, at least prior to the outbreak of war between the United States and Japan on December 7, 1941, had never been re-credited with the amount of said check or any part thereof.

1304

On August 29, 1941, Standard-Vacuum was advised over the telephone by Yokohama Specie's New York agency that the latter had received telegraphic instructions from Yokohama Specie to pay Standard-Vacuum said sum of $557,561.25.

1305

Prior to August 29, 1941, and on or about July 26, 1941, the President of the United States amended Executive Order No. 8389 to include Japan and its nationals within its restrictions and thereby the New York agency of Yokohama Specie was prohibited from paying Standard-Vacuum said amount of $557,561.25 until the payment should be authorized by the Secretary of the Treasury by license or otherwise.

1306 *Defendant's Exhibit J.*

In the telephone conversation of August 29, the agency stated that it would pay $557,561.25 to Standard-Vacuum out of the funds of the agency on deposit with Guaranty Trust Company of New York upon the granting of a license by the Treasury Department. This notification by telephone was confirmed by letter dated the same day, a copy of which is annexed hereto as Exhibit C (1), in which the agency stated that it understood that Standard-Vacuum was filing an application with the Treasury Department for a license "in order
1307 to permit us [the agency] to make this payment to you [Standard-Vacuum]."

Immediately after receiving advice from the agency that $557,561.25 was available, Standard-Vacuum filed an application, No. NY 235383, dated August 29, 1941, with the Treasury Department for a license to permit the agency to pay said funds to Standard Vacuum. No action was taken by the Treasury Department on the application prior to December 8, 1941, when the Congress of the United States declared the existence of a state of war with the Government of Japan, and
1308 Standard-Vacuum has not been paid any part of said $557,561.25.

Heretofore Standard-Vacuum assigned its above-described claim against Yokohama Specie to claimant. Claimant has not been paid any part of said $557,561.25.

Defendant's Exhibit J.

1309

CRAVATH, SWAINE & MOORE
15 Broad Street
New York, New York

April 13, 1944

Dear Sir:

We file herewith notices of two claims of Eugene T. Singer, 26 Broadway, New York 4, N. Y., against the Alien Property Custodian by reason of vesting orders specified in the notices enclosed herewith and against the property of The Yokohama Specie Bank, Ltd., which the Alien Property Custodian has vested in himself by said vesting orders and such property of The Yokohama Specie Bank, Ltd., as has, or may, come into the possession of the Alien Property Custodian by reason of said vesting orders.

1310

Request is hereby made for a hearing on the claims described in the enclosed notices of claim.

Very truly yours,

/s/ CRAVATH, SWAINE & MOORE

1311

Office of Alien Property Custodian,
Washington 25, D. C.

Encls.
40

1312 *Defendant's Exhibit J.*

UNITED STATES OF AMERICA

OFFICE OF ALIEN PROPERTY CUSTODIAN

CLAIM OF EUGENE T. SINGER *against* ASSETS OF YOKOHAMA SPECIE BANK, LTD., Vested by Alien Property 1313 Custodian.	LLS:SMJ:nmc Claim No. 2012. Amendment of Claim.

Notice of Claim No. 2012 of Eugene T. Singer dated April 12, 1944, is hereby amended in the following particulars:

(a) By adding to Exhibit A, Item 4-a of said Notice—"5. All property of any nature whatsoever subject to the jurisdiction of the United States and owned or controlled by, payable or deliverable to or held on behalf of or on account of or owing to, the Manila Branch of The Yokohama Specie Bank, Ltd."
1314

(b) By adding to Item 4-b of said Notice—"Yokohama Specie Bank, Manila Branch, Commonwealth of the Philippines".

(c) By adding to Exhibit B, Item 4-c of said Notice—"Vesting Order P-1 dated January 7, 1946".

/s/ EUGENE T. SINGER
Claimant

(Verified by Eugene T. Singer February 25, 1946.)

Defendant's Exhibit K.

(See Opposite. ☞*)*

(P. 439)

FORM D-302

OFFICE JOURNAL NO. M 1571 applied for 6/15/42

DATE 5 **19**

	POLIC	CODE NO.	AMOUNT DEBIT	AMOUNT CREDIT
To charge Yakabama remittance Acct with $55756125 remitted on Aug 4/ but left out of Voucher closing Cash Journal sheets pending a license to pass same (Part of Statement Vo. #19) the abv. Vo. M1322 Control # 4	343	4270	55756125	
Control # 4	Stat Cash 2378928.00	4250		55756125
N44-8343M, T/O/W				

PREPARED DATE CHECKED APPROVED

1318 **Defendant's Exhibit L.**

Journal Voucher No. M 22 STANDARD-VACUUM OIL Co. MAIN LEDGER Date December 31, 1944	Audited AWC A H B Maker A B L Examiner M. T. Approval W H

1319 To reverse voucher M-45 Dec. 31, 1941 wherein the remittance arranged by the Yokohama Branch Office on August 29, 1941 through the Yokohama Specie Bank, Ltd. New York Agency was written off as an uncollectible bad debt for the reason that license to permit payment by the New York Agency was denied by the U. S. Treasury—see Office Journal Voucher M-1544, December 31, 1941. Treasury License N. Y. 679033 T-4/3/45.

This reversal is now made in view of the judgement rendered in our favor on Nov. 30, 1944 by the New York State Court of Appeals as per attached memo dated Feb. 5, 1945.

1320

	Debit	Credit
MACHINE CONTROL No. 1	557,561.25	
TOTAL	557,561.25	
GENERAL PROFIT & LOSS		557,561.25
TOTAL		557,561.25

Defendant's Exhibit L. 1321

Form D-318

Listing No.....

Control A/C No. 1000 To Control A/C No.....

December, 1944

Ref.	Particulars		Credit
M 574	To reverse Voucher M-1544 —Dec. 31, 1941 wherein the remittance arranged by the Yokohama Branch Office on Aug. 29, 1941 through the Yokohama Specie Bank, Ltd New York Agency was written off as an uncollectible bad debt for the reason that license to permit payment by the New York Agency was denied by the U. S. Treasury. This reversal is now made in view of the judgment rendered in our favor on Nov. 30, 1944 by the New York State, Court of Appeals as per attached copy of memo dated Feb. 5, 1945 License NY679033 T 4/3/45 522018.....	1322 1323	557,561.25

1324 *Defendant's Exhibit L.*

MEMORANDUM

February 5, 1945

Mr. M. Tyler:

On December 31, 1941 we wrote off as a bad debt an amount of $557,561.25 covering a remittance from Japan that was arranged by the Company's Yokohama Branch Office on August 29, 1941 through the Yokohama Specie Bank, Ltd.—New
1325 York Agency. The New York Supreme Court Court of Appeals per Legal Dept. rendered a judgment in the Company's favor for its claim for this remittance; and in view of this judgment, the amount should be reversed and set up in the Company's claim account, "Yokohama Specie Bank, Ltd.—New York Agency."

I suggest that you discuss the wording of your voucher with Mr. Hargreaves in order to see whether or not there is any particular wording we should use in preparing your December 1944 voucher, and I believe that it will also be neces-
1326 sary to have Mr. Midtbo obtain the necessary license.

The vouchers pertaining to this remittance are No. M-45, 1941 and No. M-1544 of December 31, 1941.
AP:LM

A. Pattison Jr.

Defendant's Exhibit M.

1327

OFFICE JOURNAL No. M 574

Date December 31, 1944

	Folio	Code No.	Amount Debit	Amount Credit
Claims	AA10	3180	557,561.25	
Yokohama Specie Bank, Ltd. New York Agency				
Main Ledger	AA10	1000		557,561.25

1328

To reverse voucher M-1544 Dec. 31, 1941 wherein the remittance arranged by the Yokohama Branch Office on August 29, 1941 through the Yokohama Specie Bank, Ltd. New York Agency was written off as an uncollectible bad debt for the reason that license to permit payment by the New York Agency was denied by the U. S. Treasury.

This reversal is now made in view of the judgment rendered in our favor on Nov. 30, 1944 by the New York State Court of Appeals as per attached copy of memo dated Feb. 5, 1945.

1329

License NY679033 T 4/3/45 SV2018.

Prepared AHB Date 2/7/45 Checked ABL

Approved HG

1330

Defendant's Exhibit N.

TELEGRAM

The Yokohama Specie Bank, Ltd.
New York

From Yokohama
Dated July 1 A.M.P.M.
Rec'd " A.M.P.M.

#1 (647)
TT # 5 a/p Standard Vacuum Oil Co.
1331 $626,455.75
[Receipt arrived]

Defendant's Exhibit O.

TRANSFER VOUCHER

The Yokohama Specie Bank, Ltd., New York,
July 1, 1941

Current a/c with 626,455.75
1332 Bankers
Guaranty Trust Co. 21897
Standard Vacuum
Oil Company

Cash paid by us
Inter office a/c Their a/c
Yokohama TTP #1 626,455.75

Cash received by us

1333

Defendant's Exhibit P.

Standard Vacuum Oil Co.

New York, July 1, 1941

Dear Sir:—

We herewith hand you our check for ******Six Hundred Twenty Six Thousand Four Hundred Fifty Five & 75/100 Dollars***** U. S. Dollars (U. S. $626,455.75) being amount of Telegraphic Transfer for account of..... 1334
in accordance with instructions received by wire from our Yokohama office.

Please sign and return the enclosed receipts both original and duplicate, and oblige

Yours very truly,

THE YOKOHAMA SPECIE BANK, LTD.
Agent

ORIGINAL

Standard Vacuum Oil Co.

New York, July 1, 1941 1335

Received from THE YOKOHAMA SPECIE BANK, LIMITED, the sum of ******Six Hundred Twenty Six Thousand Four Hundred Fifty Five & 75/100 Dollars***** U. S. Dollars (U. S. $626,455.75) being amount of Telegraphic Transfer for a/c of .....as advised by their Yokohama office.

Name STANDARD-VACUUM OIL CO.

Address R W Mitchell

1336

Defendant's Exhibit Q.

(See Opposite. ☞*)*

1337

1338

(P. 447)

No. 21897

New York, JUL 1 - 1941

The Yokohama Specie Bank, Limited

PAY TO THE ORDER OF STANDARD VACUUM OIL COMPANY ***** $626455.75

THE SUM OF SIX HUNDRED TWENTY SIX THOUSAND FOUR HUNDRED FIFTY FIVE & 75/100 DOLLARS ****

GUARANTY TRUST COMPANY
OF NEW YORK
NEW YORK

The Yokohama Specie Bank, Limited
[signature] Agent

PAY TO THE ORDER OF
NATIONAL CITY BANK
NEW YORK
STANDARD-VACUUM OIL COMPANY

THE ORDER OF ANY
BANKER OR TRUST COMPANY
OR THROUGH THE
NEW YORK CLEARING HOUSE

Br. No. 8

JUL 1 '41 0001

PRIOR ENDORSEMENTS GUARANTEED
THE NATIONAL CITY BANK
OF NEW YORK 1-8
29 BROADWAY BRANCH

1342

Defendant's Exhibit R.

(See Opposite. ☞*)*

1343

1344

JUL 7 1941

The Yokohama Specie Bank, okohama Specie Bank, Ltd.

No. 1

REGISTER ADVICE of ~~DRAFTS~~ and T. T of ~~DRAFTS~~ and T. T. SOLD

On New York H O H O Advice Forwarded to YOKOHAMA SPECIE BK. NEW YORK RECEIVED AUG 6 1941 Approximate Date of Arrival Page

Date	No.	Under Advice or on Application	Applicant	In Favour of	Face Amount	Rate of Exch.	Face Amount	Rate of Exch.	Amount to be Credited	Amount to be Debited	Date of Payment	Remarks
				Standard Vacuum Oil Co	$6264575		$6264575					

Exhibit R

375m.m. x 160m.m. Made in Japan

1348

Defendant's Exhibit S.

TELEGRAM.

The Yokohama Specie Bank, Ltd.
New York

From Yokohama
Dated Aug 29th A.M.P.M.
Rec'd Aug 29th A.M.P.M.

T. T. No. 1 (781)

1349 Standard Vacuum Oil Co. $557,561.25

(Mr. Mitbo)

Defendant's Exhibit T.

TREASURY DEPARTMENT
Office of
Comptroller of the Currency

New York City,
August 15, 1941.

1350

Comptroller of the Currency,
Washington, D. C.

Dear Sir:

I have your letter of August 12 requesting a report outlining the methods employed in supervising the activities of the Yokohama Specie Bank and the extent to which the operations of the bank within the United States are under our control.

The Yokohama Specie Bank, Ltd., with headquarters at Yokohama and its principal business office in Tokyo, is the principal import and export

bank of Japan. It has total assets equivalent to $850,000,000, a capital and reserve fund equivalent to $60,000,000, and worldwide branches. The branches within the territorial limits of the United States are in New York, San Francisco, Los Angeles, Seattle and Honolulu. This New York branch has total assets of $89,000,000 and there are outstanding letters of credit in the amount of $19,000,000 which are not shown on the general books. A statement of this branch as of July 25 is enclosed. The business of this branch is largely 1352
concerned with the import and export of merchandise and with the credits of various kinds incidental to the movement of goods.

I believe that we are in virtually full control of the assets of the branch within the United States and of the payment of liabilities. The explanatory schedule attached to the enclosed statement covers the principal accounts, but you may be interested in the following brief and rough summary of the dollar position which excludes from consideration certain assets which we do not expect to collect in dollars as well as certain liabilities which, under the freezing order, probably can- 1353
not be paid.

Cash and due from local banks	$ 6,600,000
Import bills, less partial payments and rediscounts	24,400,000
	$31,000,000
Due from branches within U. S. and possessions	16,100,000
(We seriously question whether these branches will be found to have any material dollar surplus	
	$47,100,000

1354 *Defendant's Exhibit T.*

The above are the assets with which to pay approximately $9,000,000 of acceptances, coupons, etc., in addition to whatever portion of the $19,000,000 of letters of credit were used and in the course of collection as of July 25th or may otherwise be paid under licenses. From those dollars in the assets there will also be requests for payments to other United States branches, and there will be operating expenses. At this point I might suggest that perhaps a consolidated statement should be made up as of July 25, show-
1355 ing the assets and liabilities of the branches within the United States, excluding Honolulu, and the consolidated totals. I especially desire a statement of the San Francisco branch, which owes this branch $10,000,000.

As concerns the control of activities, the bank is virtually in a position where nothing can be done without a special license, there being considerable uncertainty existing as to what a foreign blocked bank can do or cannot do under the general licenses. All applications for special licenses must be investigated very closely, and they are
1356 mostly intricate, involving not merely the withdrawal of funds but a whole series of transactions in connection with the movement of merchandise from one country to another. This work is very heavy and is increasing. In the hope of relieving this condition and avoiding a serious jam which is likely to eventuate, we have drawn up and submitted an application for a special license designed to eliminate much useless special licensing work.

We have the cash under seal, and the accounts with other domestic banks are blocked. The export bills, together with the relative merchandise,

1357

were already en route abroad when we took charge. The import bills, from which we expect to receive a considerable amount in dollars are completely controlled in the bank, together with the warehouse receipts for the relative merchandise which had not already been released on trust receipts prior to July 26th. We have received no written instructions from the Treasury Department, and the system we have evolved is much the same as in a receivership except that the officers and employees still function and have access to all the books and record.

1358

In this sort of work it appears necessary and advisable to maintain a close check on the day-to-day transactions in order that we may ascertain that they are effected under proper licenses and according to the terms of thereof. To effect this control we have a break-down of all the general ledger accounts, (this being used also for the first report), and a separate sheet for each account. Each day's entries are transcribed on the respective sheets and are fully checked in all respects, including the respective special or general licenses. In effect, this is our own general ledger.

1359

When circumstances permit we probably will set up another control in the nature of a centralized liability ledger which will show the liabilities of all debtors in all accounts.

Altho not within the scope of the request contained in your letter of August 12, we might digress somewhat in order to consider certain other interesting aspects of this branch. The Japanese officers were preparing for almost any eventuality, including war, when, on July 23, they paid out $200,000 in cash to the Japanese staff of 21 members. This payment included accrued retirement

1360 *Defendant's Exhibit T.*

fund, about a year's advance salary, and $1,000 each for traveling expenses. In the eight days just prior to the freezing order, nearly $1,000,000 was paid to the Japanese Navy Office, New York, in cash. Just prior to the order, instructions were sent to some South American and Central American banks, diverting to Japan the proceeds of the collection of certain bills held for the account of this branch. All of these things are probably the things we would have done, had we been in their places, and all were done probably on the
1361 instructions from the head office in Japan.

The officers of this branch were all educated in Japan, as well as some of the employees. Several of the Japanese employees were born and educated in the United States, and have never been out of it. There are many white employees. During the depression years none of the employees were dismissed or laid off, and they even received reduced semi-annual bonuses. Apparently a liberal retirement-allowance system was in effect for many years before it was generally considered by American banks. Pensions have been paid to
1362 widows of employees. In the last war, white employees who left for the army received full pay during their service, and their positions were open to them after the war.

We do not know at this time what a consolidated statement of the branches within the territorial limits of the United States would show. From the figures in this branch it would appear that the Japanese have left plenty of dollar assets to pay their dollar liabilities altho it comes about through the export of silk and other goods from Japan right up the last moment. There is a net total of $56,000,000 owing to the foreign branches and to

Defendant's Exhibit T.

1363

the Japanese Government, this figure being subject to some adjustments if they should attempt to effect payment abroad of some debts due from local agencies of Japanese concerns. In the case of the National City Bank branches in Japan, the situation is exactly reversed, and, (as I recall), Japanese creditors must depend on dollars on deposit with the head office for a very large proportion of the debts. I believe that the Japanese have never raised any objections in this respect. There are many indications that the officers in this branch have no sympathy with the war move- 1364
ment in Japan and they are much more concerned with maintaining the credit and financial integrity of the bank, looking forward to the resumption of normal relations. They "take life easily" in a manner quite incomprehensible to a national bank examiner.

Respectfully,

(sgd) C. ASHWOOD
National Bank Examiner.

1365

1366 *Defendant's Exhibit T.*

THE YOKOHAMA SPECIE BANK LTD.
New York Agency, 120 Broadway, N. Y. C.
Close of Business July 25, 1941.

RESOURCES:	
Advances(1)	$ 6,238,244.55
Bills Bought	25,515.99
Interest bills(2)	7,584,230.75
Import bills, etc.(3)	24,304,018.94
Bonds owned (Japanese bonds, held in Japan)	469,926.14
Due from domestic banks	6,204,936.92
1367 Cash	388,178.09
Liabilities of customers for acceptances and guarantees	7,228,345.25
Profit and loss	30,052.86
Due from branches:	
(U. S. and Possessions)	16,136,644.61
(Foreign)	20,483,962.42
Other assets	312,779.57
	$89,406,836.09
LIABILITIES:	
1368 Due to the Bank of Japan as agent for the Imperial Japanese Government(4)	$18,183,352.21
Temporary receipts(5)	1,430,272.57
Partial payments of bills receivable (import bills, contra)	1,361,529.14
Bond and coupon redemption fund	604,727.89
Drafts outstanding (various kinds)	464,449.85
Due to foreign banks	127,475.88
Bills rediscounted (import bills, contra)	2,020,994.05
Acceptances and guarantees(6)	7,228,345.25
Due to branches (foreign)	57,985,689.25
	$89,406,836.09

Various letters of credit, approximately $19,000,000.

(1) Mitsui & Co. Ltd.	$ 907,352.00
Japan Cotton Co.	560,399.14
Southern Cotton Co.	314,546.27
Mitsui Bank Ltd.	1,500,000.00
Bank of Taiwan Ltd.	2,390,000.00
Others	565,947.14
	$ 6,238,244.55

(2) These are export bills. The merchandise and bills have been sent out of the country (in accordance with usual banking practice), and there will probably be no cash collected in the United States from this source. 1370

(3) Estimated:	
Payable in U. S. and Canada	$20,460,968.71
Payable in South and Central America	3,368,879.76
Payable in Cuba and West Indies	438,374.16
Other	25,796.31
	$24,304,018.94
Plus received since taking charge, approximately	3,500,000.00
	$27,804,018.94

(4) As far as we have been able to determine at this time, this account represents money deposited for payments of bonds, coupons, and any other government needs. 1371

(5) This account is a sort of catch-all for many sub-accounts. It might be designated as "sundries".

(6) Acceptances:	
For Mitsui Bussan Co. Ltd.	$ 309,860.36
For Southern Cotton Co.	473,157.42
Guarantees:	
For Nihon Kogyo K.K. (Trading Co.) in favor of Oriental Cons. Mining Co. (expires 1941 to 1943)	6,431,900.00
Others	13,427.47
	$ 7,228,345.25

1372 **Defendant's Exhibit U.**

FORM 1430
TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY—REPORTS
8-22-41

Yokohama Specie Bank, Ltd.
No. of Bank

GENERAL REMARKS

History

1373 The Yokohama Specie Bank, Limited (Yokohama Shokin Ginko) was established in 1880, under the laws of Japan, with its head office at Yokohama. This bank is of a semi-governmental nature, with numerous branches scattered throughout the Far East, and for that matter, throughout the world. Latest figures available are those of June 30, 1941, which reflect capital and surplus (including reserves) of ¥ 254,000,000 with cash and bullion on hand, at ¥ 472,000,000.

The New York Agency was opened in 1880 and subsequently licensed by the New York State
1374 Banking Department. The principal functions here, were, to act as fiscal agent for the Japanese Government and the Bank of Japan, to create dollar exchange through its operations as an import and export bank and to cater to the Japanese business firms in the United States as their financial center with the exception of accepting dollar deposits.

This agency enjoyed a tremendous volume of business during its entire existence with its related share of earnings, maintaining a marked degree of liquidity at all times, as far as American liabilities were concerned.

Defendant's Exhibit U.

On July 25, 1941, Executive Order 8389 became effective, freezing all the assets and liabilities of the Agency in New York. Treasury Supervisors immediately took possession of all activities, permitting transactions to be consummated, pursuant to approved licenses. Proper records were maintained and virtual control of all assets and liabilities was established.

Supervision was continued until close of business December 6, 1941, when the Agency was closed and placed in the hands of the Superintendent of Banks of the State of New York, for liquidation.

SCOPE OF SUPERVISION

Cash on Hand

All cash, both United States and foreign currencies, was placed under seal, all withdrawals being made under supervision of and with permission of the Supervisor, the cash resealed after every transaction. A continuous record of entries was maintained.

Due from Domestic Banks

Domestic bank accounts were reconciled and verified at regular intervals, withdrawals or charges permitted only pursuant to approved licenses and subject to the approval of the Supervisor. Proper record and control was maintained of all transactions.

Loans, Advances and Bills Purchased

Included herein are advances of $5,626,846.59 from which little or no recovery may be anticipated. Of the dollar bills purchased or discounted amounting to $13,106,152.70 collections are estimated at the conservative figure of $1,908,500.,

1378 *Defendant's Exhibit U.*

which amount is approximately 10% of the total of loans, advances and bills purchased.

No complete verification of all component items was possible but book records were listed and totals of such listings is in agreement with records.

Customers' Liabilities on Acceptances and Guarantees

This is merely a contra account and of no value in computing realization value for liquidation
1379 purposes.

Due from Foreign Banks

A control record of these accounts was maintained although no means of verification was possible. Entries permitted pursuant to license only.

Securities

All securities owned were held abroad. No entries passed during the period of supervision. The actual existence of these securities could not be verified.

1380 Accounts Receivable

Proper control of this account was maintained. All entries were made pursuant to approved licenses.

Furniture & Fixtures

No inventory was made as the book value was considered of little importance. Entries were made pursuant to license and proper record maintained.

Due from Domestic Branches

This sum represents amounts due the New York Agency from other American agencies including Honolulu. The only sum anticipated in liquida-

tion is approximately $1,705,000., the market value of $1,550,000. par value of U. S. Treasuries 2⅞—1960, held in safekeeping by the Chase National Bank, New York for account of the Honolulu branch.

Proper record of all transactions was maintained and all entries passed were pursuant to approved licenses subject to the discretion of the Supervisor.

Dollar Drafts Payable and Outstanding

This account includes both drafts drawn on 1382
domestic banks and dollar drafts sold. Control of all payments was maintained, such payments being made pursuant to licenses. The total liabilities under this caption has been materially reduced since July 25, 1941.

Accounts Payable

The principal items contained herein are payable to nationals of Japan. All transactions were permitted pursuant to licenses only. Proper control of all entries was maintained.

Due to Foreign Banks

This sum represents the total of amounts due, 1383
in dollars, to Japanese Banks. However, only $238,303.90 are dollar balances maintained here, the remainder is divided as follows: Due to the Bank of Japan as agent for the Japanese Government, including dollar balances in the bond servicing accounts of the Japanese Government

$18,131,614.37	$18,131.614.37
Due to the Yokohama Specie Bank, Ltd., Yokohama, dollar balances in the bond servicing accounts of the Cities of Yokohama, Tokio and Taiwan	376,841.01
	$18,508,455.38

1384 *Defendant's Exhibit U.*

Proper control of these accounts was maintained, all entries permitted pursuant to licenses and deemed proper in the estimation of the Supervisor.

Foreign Currency Drafts Outstanding

This account represents the total of drafts sold, drawn on Japan in Yen, or drawn in other foreign currencies.

Proper record and control of all transactions was maintained, all entries made pursuant to
1385 licenses only.

Liabilities Under Acceptances and Guarantees

This account represents drawings advised under letters of credit. The major portion has been liquidated since closing by the settlement of the Oriental Consolidated Mining Co. credit of $6,195,700. for $4,500,000.

All entries were made pursuant to licenses and proper records were maintained.

Due to Head Office and Foreign Branches

This account represents the net sum due Head Office after offsetting all amounts due from against
1386 the liabilities due Head Office and Foreign Branches.

Proper control of entries was maintained. All adjustments were made pursuant to licenses.

Safekeeping

All securities and other items held here were checked and kept under seal. All securities held elsewhere were verified and confirmed by correspondence. Withdrawals were permitted only pursuant to licenses and proper records were maintained.

Defendant's Exhibit V. 1387

Licenses

Extreme caution was exercised in the preparation of applications for licenses. Licenses approved were considered as permissive only and under this theory many payments permitted by licenses were rightfully withheld despite some criticism to the contrary. Proper record was maintained of all applications filed and licenses granted.

Defendant's Exhibit V. 1388

THE YOKOHAMA SPECIE BANK, LIMITED
New York Agency
120 Broadway
New York

June 16, 1941

Gentlemen:

We take pleasure in advising that Power of Attorney has been conferred upon Mr. Seiichi Araki, authorizing him to sign on and after the above date for this office, per procuration.

We also advise that Messrs. Kiyozo Kuwahara 1389
and Jukichi Takeda, who sign as per procuration, will cease to sign for this office from the above date, as they have been transferred.

We submit herewith the specimen signatures of those gentlemen who are now authorized to sign on behalf of this office.

Yours very truly,

THE YOKOHAMA SPECIE BANK, Limited

KAZUO NISHI
Agent

1390 *Defendant's Exhibit V.*

THE YOKOHAMA SPECIE BANK, Limited
(New York Agency)

Mr. Kazuo Nishi, Agent will sign:
KAZUO NISHI

Mr. Tsunehiko Kanai, Agent will sign:
T. KANAI

Mr. Tadaichi Doida, Agent will sign:
T. DOIDA

1391

Mr. Katsumi Tsukino, p. p. Agent will sign:
K. TSUKINO

Mr. Kenroku Yoshiwara, p. p. Agent will sign:
K. YOSHIWARA

Mr. Kohji Matsumoto, p. p. Agent will sign:
K. MATSUMOTO

Mr. Koichi Ito, p. p. Agent will sign:
KOICHI ITO

1392

Mr. Seiichi Araki, p. p. Agent will sign:
S. ARAKI

Mr. Kihachiro Kimura, p. p. Agent will sign:
K. KIMURA

Mr. Nobuo Usami, p. p. Agent will sign:
N. USAMI

Defendant's Exhibit V-1. 1393

THE YOKOHAMA SPECIE BANK, LIMITED
New York Agency
120 Broadway
New York

December 1, 1941

Gentlemen:

We take pleasure in advising that Power of Attorney has been conferred upon Mr. Motonari Miwada, authorizing him to sign on and after the 1394
above date for this office, per procuration.

We also advise that Mr. Nobuo Usami, who signed per procuration, will cease to sign for this office from the above date as he has been recalled to Japan.

Appended at the foot of this letter is the specimen signature of Mr. Miwada.

Yours very truly,

THE YOKOHAMA SPECIE BANK, Limited
K. TSUKINO
Agent 1395

Mr. Motonari Miwada will sign:
THE YOKOHAMA SPECIE BANK, Limited
M. MIWADA
p. p. Agent

1396 **Defendant's Exhibit W for Identification.**

STANDARD-VACUUM OIL COMPANY
26 Broadway
New York

June 10, 1941

The Yokohama Specie Bank, Ltd.
120 Broadway
New York, New York

1397 Gentlemen:

In consideration of your Tientsin, China, Office allowing clean overdrafts to our Tientsin Branch until January 1, 1942, to an amount not to exceed Chinese Yuan 400,000 (Federal Reserve Bank of China currency) we hereby guarantee that our Tientsin Office will pay any and all such overdrafts, together with interest and other charges, when called upon to do so.

This guarantee replaces like guarantee dated December 17, 1940, expiring June 30, 1941.

1398 Yours very truly

P. W. PARKER
President

E. J. KENNEY
Assistant Treasurer

EJK:vjn

Defendant's Exhibit W-1 for Identification. 1399

THE YOKOHAMA SPECIE BANK, LIMITED
New York Agency
120 Broadway
New York

Cable Address
Shokin-New York
June 11, 1941

Standard-Vacuum Oil Company
26 Broadway
New York, N. Y. 1400

Att: Mr. E. J. Kenney,
Asst. Treasurer

Gentlemen:

We refer to our telephone conversation of the 9th instant, at which time we informed you that we had received a letter from our Tientsin Office requesting that we obtain from you an extension to December 31, 1941 of your guarantee of overdrafts extended by them to your office in their city, up to the limit of ~~Chinese~~ Yuan 400,000.

We wish to acknowledge receipt of your letter of guarantee, dated the 10th instant, which guarantee expires at midnight on December 31, 1941, covering the above overdrafts. 1401

For your information, we wish to advise you that we have cabled our Tientsin Office today that we have received this guarantee from you.

Yours very truly,

THE YOKOHAMA SPECIE BANK, Limited
K. TSUKINO
Agent

EJM:FC

(Mr. E. J. Kenney
Please (note, approve) and return
A. G. Vanderpoel)

1402 **Defendant's Exhibit X.**

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

EUGENE T. SINGER,
Plaintiff,

against

1403 THE YOKOHAMA SPECIE BANK, LTD. and ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendant.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

1404 CHARLES H. SCHOCH, being duly sworn, deposes and says: that he is a Deputy Superintendent of Banks of the State of New York, and is in charge of the supervision of commercial banks, trust companies, private banks and bankers, industrial banks, foreign agencies, safe deposit companies and certain investment companies.

For purposes of supervision, the Banking Department has always treated the New York Agency of a foreign banking corporation as an entity separate and apart from the parent corporation or any of its other branches, offices or

Defendant's Exhibit X.

agencies. Separate books and supporting records are required to be maintained reflecting assets in the possession or under the control of the New York Agency and all liabilities of the Agency. Regular periodic examinations of the business and affairs of the New York Agency are conducted by examiners of the Department. Such examinations are for the purpose of determining the assets of the Agency, and its liabilities as reflected by the books and supporting records of the Agency. 1405

In addition to the periodic examination, the Banking Department in accordance with Section 204 of the Banking Law requires each Agency in this State to prepare and submit weekly a report showing the assets in its possession or under its control, and the liabilities as reflected by its books and supporting records. No such weekly reports are required of domestic banks or trust companies or other banking organizations which have capital and surplus as required by the Banking Law. 1406

One of the essential purposes of the periodic examination of the Agencies and of the weekly reports above referred to is to protect the creditors of the Agency and to assure the State that the assets here are adequate to pay such creditors. If it appears from any of such examination or reports that the assets in the possession of or under the control of the New York Agency are insufficient to pay the creditors of the Agency, immediate request is made to the Agency for correction of the condition. 1407

A report of the assets and liabilities of the foreign banking corporation as a whole is regularly received by the Banking Department once in each year upon the issuance of a license or renewal

1408 *Defendant's Exhibit X.*

license, in accordance with the provisions of Section 201 of the Banking Law.

CHAS. H. SCHOCH

Sworn to before me this
3rd day of September, 1946.

RICHARD J. LARGE

RICHARD J. LARGE
NOTARY PUBLIC State of New York
1409 Residing in Westchester County
Cert. Filed in N. Y. Co. Clk's No. 921
Commission Expires March 30, 1947

1410

Defendant's Exhibit Y.

1411

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

EUGENE T. SINGER,
Plaintiff,
against

THE YOKOHAMA SPECIE BANK, LTD. and ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendant.

1412

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JOHN FRANK WOOD, being duly sworn, deposes and says: that he is a Deputy Superintendent of Banks and Counsel for the Banking Department of the State of New York.

1413

Chapter 65 of the Laws of 1946, approved by the Governor of the State of New York on February 28, 1946 amended Section 606, Subdivision 4 of the Banking Law. This legislation was sponsored by the Banking Department, and was first introduced in the Senate (Senate Introductory 428, Print 429) and in the Assembly (Assembly Introductory 460, Print 461) on January 21, 1946. The measure was in due course referred to the

1414 *Defendant's Exhibit Y.*

Committee on Banks in each house of the Legislature.

At or shortly after the time of the introduction of the bill, and before said bill was reported out of the Committee on Banks in either house of the Legislature, deponent delivered copies of the supporting memorandum, prepared by the Banking Department under his supervision, a copy of which memorandum is annexed hereto as Exhibit A, to the following:

1415 (a) Fifteen copies thereof to the office of the Chairman of the Assembly Committee on Banks for the use of the members of that committee.

(b) Fourteen copies thereof to the office of the Chairman of the Senate Committee on Banks for the use of the members of that committee, and one copy thereof to Senator Pliny W. Williamson, a member and former Chairman of the Senate Committee on Banks.

(c) One copy thereof to the Majority Leader
1416 of the Senate;

One copy thereof to the Minortiy Leader of the Senate;

One copy thereof to the Majority Leader of the Assembly; and

One copy thereof to the office of the Minority Leader of the Assembly.

After the bill had been printed, at least one additional copy of such memorandum was delivered or mailed to the office of each of the above mentioned leaders.

Defendant's Exhibit Y. 1417

Prior to the approval of the bill by the Governor, at least three copies of the aforesaid memorandum were delivered or mailed to the office of the Counsel for the Governor.

JOHN FRANK WOOD (signed).

Sworn to before me this 3rd day of September, 1946.

RICHARD J. LARGE (signed)
Notary Public, State of New York 1418
Residing in Westchester County
Cert. Filed in N. Y. Co. Clk's No. 921
Commission Expires March 30, 1947

1419

1420 *Defendant's Exhibit Y.*

Exhibit A

NEW YORK STATE BANKING DEPARTMENT

MEMORANDUM

Senate Int. 428, Print 429
Assembly Int. 460, Print 461

AN ACT to amend the banking law, in relation to
1421 the vesting of title to, the prosecution of actions arising out of, and claims against, the business and property in this state of foreign banking corporations in involuntary liquidation.

This bill relates to problems arising in connection with the liquidation of the business and property of foreign banking corporations which have been taken over by the Superintendent.

Under the present law, the Superintendent is required to deal with assets of institutions being liquidated by him in the names of the respective institutions. While this procedure creates no
1422 difficulties in the case of domestic institutions, it results in technical problems in the liquidation of foreign owned assets. In such cases, the Superintendent does not take possession of the foreign corporation, but merely of its business and property in this state. Since he is not in possession of the foreign corporation itself, the Superintendent should not be required to act in its name. If he does not act in the name of the foreign corporation, there is no legal entity in whose name he may act. If he acts in the name of the foreign corporation, he may be confronted with the disabilities imposed on foreign corpora-

1423

tions by the laws of the state (see *Yokohama Specie Bank* v. *National City Bank* (1944), 183 M. 610 revg. 182 M. 369), and in the case of enemy corporations, by federal law. To correct these matters, the bill provides that title to all assets of foreign corporations taken over by the Superintendent shall vest by operation of law in the Superintendent, who may deal with respect to such assets and may sue or be sued in his own name as Superintendent. The amendment is modelled in part after Section 514 of the Insurance Law.

1424

Under the present law, preference in the distribution of the assets in this state of foreign banking corporations is granted to persons whose claims arise out of transactions with the New York Agency, or whose names appear as creditors on the books of such agency. The granting of a preference to the latter class is unnecessary since book creditors are ordinarily persons whose claims arise out of transactions with the New York Agency and are, therefore, embraced in the first class. Conceivably, a book creditor may not have had a transaction with the New York agency. Such a situation would be most unusual and it would seem to the Banking Department that if it did arise, the creditor should not be preferred. Accordingly, the amendment would limit the preference granted by the act to persons whose claims arise out of transactions with the New York agency and; at the same time, it would provide a definition of the kind of transaction which would entitle a creditor to participate. The bill provides that the transaction must be such that if the agency were a separate and independent legal entity, an enforceable legal obligation would have been created against it. This, we believe, is the

1425

1426 *Defendant's Exhibit Y.*

present law (*Singer v. Yokohama Specie Bank, Ltd.* (1944), 293 N. Y. 542), and the amendment is intended to eliminate any doubt on the subject.

The final section of the bill indicates the manner in which it applies to pending liquidations but makes it clear that the new provisions are not to apply retroactively so as to affect substantive rights already accrued or to render invalid actions heretofore taken in the liquidation of the business and property in this state of foreign banking corporations.

1427

January 9, 1946.

1428

Defendant's Exhibit Z.

1429

BANKING DEPARTMENT

STATE OF NEW YORK

WHEREAS, YOKOHAMA SPECIE BANK, LIMITED a banking corporation duly incorporated under the laws of the EMPIRE of JAPAN, and having its principal office in the City of YOKOHAMA, JAPAN has made application to maintain an agency at No. 120 BROADWAY in the Borough of Manhattan, City of New York, for the purpose of transacting the business of buying, selling, paying or collecting 1430
bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable, or otherwise, or of making sterling or other loans, or any part of such business, and

WHEREAS, The said corporation has complied with the conditions imposed by the Banking Law and appears to be duly qualified to maintain such agency under the provisions thereof;

NOW, THEREFORE, I, WILLIAM R. WHITE, Superintendent of Banks of the State of New York, do 1431
hereby authorize and license the said corporation to transact for a period of one year from the date hereof, at the above location, the business hereinbefore specified.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Banking Department to be affixed this fifteenth day of November, 1940.

WILLIAM R. WHITE (signed)
Superintendent

(Seal)

1432 **Defendant's Exhibit Z-1.**

STATE OF NEW YORK

BANKING DEPARTMENT

WHEREAS, YOKOHAMA SPECIE BANK, LIMITED, a banking corporation duly incorporated under the laws of the Empire of Japan, and having its principal office in the City of Yokohama, Japan, has made application to maintain an agency at No. 120 Broadway, in the Borough of Manhattan, City of New York, for the purpose of transacting the busi-
1433 ness of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable, or otherwise, or of making sterling or other loans, or any part of such business, and

WHEREAS, The said corporation has complied with the conditions imposed by the Banking Law and appears to be duly qualified to maintain such agency under the provisions thereof;

NOW, THEREFORE, I, WILLIAM R. WHITE, Super-
1434 intendent of Banks of the State of New York, do hereby authorize and license the said corporation to transact for a period of three months from the date of November 15, 1941, at the above location, the business hereinbefore specified.

WITNESS, my hand and official seal of the Banking Department at the City of Albany, this fifteenth day of November in the Year of our Lord one thousand nine hundred and forty-one.

WILLIAM R. WHITE
Superintendent of Banks

(SEAL)

By: JACKSON S. HUTTO (signed)
Deputy Superintendent
of Banks

Defendant's Exhibit AA.

1435

FEDERAL RESERVE BANK OF NEW YORK

Fiscal Agent of the United States

December 19, 1941

Mr. William R. White
Superintendent of Banks
State of New York Banking Department
80 Centre Street
New York, N. Y.

1436

Dear Mr. White:

You are hereby authorized, only in so far as relates to Executive Order No. 8389, as amended, to effect payments from the blocked accounts at domestic banks in the name of New York agencies of Japanese and Italian banks for the purpose of office maintenance and other expenses incidental to the administration of the property of such agencies in anticipation of liquidation.

Very truly yours,

1437

NORMAN P. DAVIS (signed)
Manager, Foreign Property
Control Department

1438 **Defendant's Exhibit BB.**

License No. N. Y. 357293-M
Date: February 9, 1942

LICENSE

(Granted under the Authority of Executive Order No. 8389 of April 10, 1940, as Amended, and the Regulations and Rulings Issued Thereunder)

To

1439 William R. White as Superintendent of Banks of the State of N. Y. (3)
80 Centre Street, New York, New York

Sirs:

1. Pursuant to your application of January 30, 1942, the following transaction is hereby licensed:

As Superintendent of Banks of the State of New York you are hereby licensed:

(1) To authorize banking institutions located in the State of New York to pay over,
1440 transmit or transfer to the Superintendent of Banks of the State of New York, as liquidator of the business and property in New York of Bank of Chosen, Bank of Taiwan, Limited, Mitsubishi Bank, Limited, Mitsui Bank, Limited, The Sumitomo Bank, Limited, Yokohama Specie Bank Limited, Banca Commerciale Italiana, Banco di Napoli, Banco di Roma, Credito Italiano, any funds or credit balances standing in the name of or belonging to or held for the account of the head office or any other office, branch or agency (includ-

ing, without limitation, the New York Agency) of any such foreign banking corporation: and

(2) To authorize banking institutions, wherever located, to pay over, transmit or transfer to Superintendent of Banks of the State of New York, as liquidator of the business and property in New York of any of such foreign banking corporations, any funds or credit balances standing in the name of or belonging to or held for the account of the New York Agency of any such foreign bank- 1442
ing corporation.

2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, among others, that you will comply in all respects with Executive Order No. 8389 of April 10, 1940, as amended, the Regulations and Rulings issued thereunder and the terms of this license.

3. The licensee shall furnish and make available 1443
for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank through which the license was issued, the Postmaster at the place of mailing or the Collector of Customs at the port of exportation.

4. This license is not transferable, is subject to the provisions of Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder and may be revoked or modified at any time in the

1444 *Defendant's Exhibit CC.*

discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

Issued by direction and on behalf of the Secre-
1445 tary of the Treasury:

FEDERAL RESERVE BANK OF NEW YORK
per pro C. F. FOULON

Defendant's Exhibit CC.

OFFICE OF ALIEN PROPERTY CUSTODIAN
Washington

Supervisory Order Number 27

1446 Re: Yokohama Specie Bank, Ltd. (New York)

Supervisory Order Number 10, issued by the undersigned under date of August 27, 1942, is hereby rescinded and canceled and the order herein contained is hereby issued in lieu thereof.

Under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation, finding:

(a) That Yokohama Specie Bank, Ltd., a Japanese corporation, Tokyo, Japan, which has an established branch office at New York,

New York, engaged in the conduct of business within the United States, is a business enterprise within the United States which is a national of a designated enemy country (Japan); and

(b) That there is property which is payable or deliverable to, or claimed by, the aforesaid Yokohama Specie Bank, Ltd., or its said New York branch, which is in the process of administration by a person (namely, the Suprintendent of Banks of the State of 1448
New York) acting under judicial supervision (namely, that of the Supreme Court of the State of New York) within the meaning of Section 2-f of the aforesaid Executive Order;

and determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of such designated enemy country, and having made all determinations and taken all action, after appropriate consultation and certification, required 1449
by said Executive Order or Act or otherwise, and deeming it necessary in the national interest, hereby undertakes the supervision to the extent deemed necessary or advisable from time to time by the undersigned of such New York branch of said business enterprise and of all property of any nature whatsoever owned or controlled by, payable or deliverable to, or held on behalf of or on account of or owing to, said branch, without, however, vesting such business enterprise or any of its capital stock or any of its property or assets.

The action herein taken shall not be deemed to limit the powers of the Alien Property Custodian

1450 *Defendant's Exhibit CC.*

to vary the extent of such supervision or to terminate the same, or to indicate that compensation will not be paid, if and when it should be determined that the extent of such supervision should be changed or that such supervision should be terminated or that compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order (but not including any claim of any nature against Yokohama Specie Bank, Ltd., or its said New York branch, which any
1451 claimant is now or may hereafter be entitled to file with the Superintendent of Banks of the State of New York) may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-6, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national", "designated enemy coun-
1452 try," and "business enterprise within the United States" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Executed at Washington, D. C. on September 18th, 1942.

(Signed) LEO T. CROWLEY
Leo T. Crowley
Alien Property Custodian

(Official seal)

Certified to be a true
copy of the original.
(signed) FRANCIS A. MAHONY.

Defendant's Exhibit DD. 1453

UNITED STATES OF AMERICA
OFFICE OF ALIEN PROPERTY CUSTODIAN

Vesting Order Number 915

Re: The Yokohama Specie Bank, Ltd. (New York)

Under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that the Yokohama Specie 1454
Bank, Ltd., a Japanese corporation, Tokyo, Japan, is a national of a designated enemy country (Japan);

2. Finding that said The Yokohama Specie Bank, Ltd. has an established agency or branch office at New York, New York, engaged in the conduct of business within the United States and therefore is, to that extent, a business enterprise within the United States;

3. Finding that the property of such New 1455
York agency of said The Yokohama Specie Bank, Ltd. is in the process of administration by the Superintendent of Banks of the State of New York acting under judicial supervision of the Supreme Court of the State of New York;

4. Finding, therefore, that the property described as follows:

The excess proceeds of the business and property in the State of New York of the Yokohama Specie Bank, Ltd. in the possession of the Superintendent of Banks of

1456 *Defendant's Exhibit DD.*

the State of New York, or which may hereafter come into his possession under and by virtue of the Banking Law of the State of New York, including but not limited to the excess proceeds of all assets of any nature whatsoever, owned or controlled by or payable or deliverable to or held on behalf of or on account of or owing to the New York agency of said The Yokohama Specie Bank, Ltd., remaining after the payment of the claims of the creditors, accepted or established in accordance with the Banking Law of the State of New York, arising out of transactions had by them with the New York agencies of said The Yokohama Specie Bank, Ltd. or whose names appear as creditors on the books of such agency, together with interest on such claims and the expenses of liquidation,

1457

is property within the United States owned or controlled by a national of a designated enemy country (Japan), and also is property which is payable or deliverable to, or claimed by, a national of a designated enemy country (Japan) and which is in the process of administration by a person acting under judicial supervision;

1458

5. Determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of the aforesaid designated enemy country (Japan);

6. Having made all determinations and taken all action, after appropriate consulta-

tion and certification, required by said Executive Order or Act or otherwise, and

7. Deeming it necessary in the national interest;

hereby vests in the Alien Property Custodian the property described in subparagraph 4 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Nothing in this order is intended to affect the 1460
right and power of the Superintendent of Banks of the State of New York to continue to retain possession of, collect and liquidate such business, property and assets and, in the course thereof, to do such acts and perform such duties (not inconsistent herewith) as may be required or permitted to said Superintendent of Banks by and in accordance with and subject to the provisions of the Banking Law of the State of New York; provided, however, that after the claims of the creditors described in subparagraph 4 hereof, together with interest thereon and the expenses of liquidation, have been paid in full, the proceeds of the 1461
remaining assets of said The Yokohama Specie Bank, Ltd. in the possession of said Superintendent of Banks shall be held for the account of and subject to the further order of the Alien Property Custodian.

The property herein vested, and any or all of the proceeds thereof, shall be held in an appropriate special acount or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate

1462 *Defendant's Exhibit DD.*

that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien
1463 Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national", "designated enemy country" and "business enterprise within the United States" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Executed at Washington, D. C. on February 15, 1943.

(Signed) Leo T. Crowley
1464 Leo T. Crowley
Alien Property Custodian

(Official Seal)

Certified to be a true copy of the original.
Francis A. Mahony, Secretary (signed)
Office of Alien Property Custodian

Defendant's Exhibit EE. 1465

STATE OF NEW YORK,

Banking Department

Certificate Under the Provisions of Section 612 of the Banking Law

I, EDWARD FELDMAN, Special Deputy Superintendent of Banks of the State of New York, do hereby certify as follows:

1. On and prior to December 8, 1941, The Yokohama Specie Bank, Limited, was a banking corporation incorporated under the laws of the Empire of Japan. 1466

2. On and prior to December 8, 1941, the Yokohama Specie Bank, Limited, was duly licensed by the Superintendent of Banks to transact a limited banking business in the State of New York, and maintained an Agency for the transaction of such business in the City of New York.

3. On December 8, 1941, pursuant to the provisions of the Banking Law of the State of New York, the Superintendent of Banks of the State of New York duly took possession of the business and property in the State of New York of The Yokohama Specie Bank, Limited, for the purpose of liquidation, in accordance with the provisions of the Banking Law of the State of New York, and has ever since been and still is in possession and engaged in the liquidation thereof. 1467

4. Pursuant to the powers vested in and duties imposed upon him under the terms and provisions of Article 13, of the Banking Law, the Superinten-

1468 *Defendant's Exhibit EE.*

dent of Banks duly caused the books and records of The Yokohama Specie Bank, Limited, New York Agency, to be examined and that examination disclosed that neither the name of Eugene T. Singer nor Standard Vacuum Oil Company appeared on the books or records of The Yokohama Specie Bank, Limited, New York Agency, on August 29, 1941 or any time subsequent thereto, as creditor or owner of an account payable.

CERTIFIED under my hand and the seal of The
1469 Banking Department of the State of New York, this 16th day of September, 1946.

EDWARD FELDMAN
Special Deputy Superintendent
of Banks.

(SEAL)

(signed) RICHARD J. LARGE
NOTARY PUBLIC State of New York
Residing in Westchester County
Cert. Filed in N. Y. Co. Clk's No. 921
1470 Commission Expires March 30, 1947

(Verified by Edward Feldman, September 16, 1946.)

Defendant's Exhibit FF.

1471

Notice to Amend Answer

(Printed at page 24; *supra.*)

Defendant's Exhibit GG.

Consists of "Documents Pertaining to Foreign Funds Control" issued by U. S. Treasury Department since the year 1940, copies of which may be handed up to the Court on the argument or submission of the Appeal herein, and may be referred to in the briefs and argument. 1472

Defendant's Exhibit HH.

September 3, 1941

Mr. A. U. Fox
Foreign Exchange Control
1610 Park Road, N.W.
Washington, D. C. 1473

Dear Mr. Fox:

You recall that in our conversation yesterday you suggested that I let you know the Federal Reserve Bank numbers of the Applications we have pending concerning which we would like word as early as possible.

The Application in connection with remittances from China is numbered NY223218. You are acquainted with our method of operating in China and especially the circumstances under which re-

1474 *Defendant's Exhibit HH.*

mittances are made. However, if there are any details not covered in the Application concerning which you would like further information, I would be very pleased to furnish it to you, either on the telephone or by going to Washington to see you. We are especially interested in the Department's attitude on the China remittances as they are coming in daily and at the present time amount to some $320,000 which has not been cleared.

We have made Applications to make offsetting entries in our New York books covering operations in the Japan and China branch offices along similar lines as we made for the French Indo-China accounts and for which a license was granted. The numbers on these Applications are NY229416 for the Japan accounts and NY232141 for the China accounts.

1475

In connection with the remittance of $557,561.25 from Japan which was the main subject of our interview yesterday, the Application number is NY235383. We understand that the treatment of this remittance is a major problem in the Department's policy and it may be several days before a decision is made, but if there is any further information you require on this or any of the other of our Applications we will be glad to furnish it.

1476

I want to express appreciation on behalf of Mr. Walden and myself to you for seeing us yesterday without an appointment and also to express our thanks for the courteous attention you have given to our problems.

With kindest regards,

Cordially yours,

E. T. SINGER

ETS:vjn

Defendant's Exhibit HH. 1477

September 19, 1941.

Mr. A. U. Fox
Foreign Exchange Control
1610 Park Road, N.W.
Washington, D. C.

Dear Mr. Fox:

I know that our application of August 29 (No. NY235383) to receive a remittance of $557,561.25 from Japan is receiving attention. We have a 1478
little more information in connection with remittances from Japan which may be of interest to you. You may recall I explained to you the former method of remitting from Japan and how forward exchange contracts were allocated by months. Our application to receive the remittance of $557,561.25 which was due in August further explains the Company's position in connection with these old exchange contracts. On September 16 we received the following cable from Japan:

"FUEL BUREAU WILL PERMIT PREPAYMENT AFTER 1479
LICENSE OBTAINED AND SEPTEMBER OCTOBER REMITTANCES AFTER SHIPMENTS MADE ALSO EXPRESS HOPE CAN ADVANCE NOVEMBER REMITTANCE TO OCTOBER BUT ARE ANXIOUS CONCERNING POSSIBILITY LICENSES BEING GRANTED AND WOULD LIKE INDICATION PLEASE TELEGRAPH (STOP) WE HAVE SUFFICIENT FUNDS NOW EXCEPT FOR NOVEMBER REMITTANCE WHICH ANTICIPATE WILL ACCUMULATE MIDDLE OCTOBER"

1480 *Defendant's Exhibit HH.*

This is the cable I mentioned to you on the telephone and the first part, "Fuel Bureau will permit prepayment after license obtained," is in conformity with the arrangements made with the Dutch. This was also the subject of another application and will apply to all future shipments from the Netherlands Indies.

The balance of the cable pertains to the method in which the old exchange contracts, covering importations and transactions prior to the "freezing" regulations, will be settled.

1481

Yours very truly,

E. T. SINGER
Treasurer.

(Acknowledged by E. T. Singer on September 19, 1941.)

December 29, 1941.

1482 Mr. A. U. Fox
Foreign Exchange Control
1610 Park Road, N.W.
Washington, D. C.

Dear Sir:

I am sorry you could not see me when I was last in Washington but can appreciate that your time is very much occupied these busy days.

It occurred to us that after a state of war existed between the United States and Japan, circumstances, particularly the question of policy in connection with the remittance of $557,561.25

Defendant's Exhibit HH.

from Japan made last August, had changed. It was these changed conditions that I would have liked to talk over with you and I also wanted to let you know what steps we had taken. Following personal interviews with the State Banking Authorities in charge of the Yokohama Specie Bank, New York Agency's affairs, our attorneys wrote a letter to the Superintendent of Banks under date of December 11, outlining the facts in connection with the remittance in question. A copy of the letter of December 11 is attached for your information.

It seems to us that the second paragraph of subsection (b) of section 7 of "Trading with the Enemy Act" is applicable to our transaction inasmuch as it provides for the payment of money belonging to an enemy to a person within the United States not an enemy for the benefit of such person, if the funds so paid have been received prior to the beginning of the war and such payment arises out of transactions entered into prior to the beginning of the war and not in contemplation thereof. The circumstances surrounding the remittance of $557,561.25, which we have been endeavoring to clear with you since last August, appear to conform in all respects with the above-mentioned provision of the "Trading with the Enemy Act". In order to have the matter cleared through the usual prescribed channels, we have filed another application supplementary to the one originally filed (Federal Reserve Bank No. NY 235383) and for your convenience a copy is attached.

It is noted from the New York papers (New York Times, December 24, 1941, clipping attached) that the Treasury apparently granted a license

1486 *Defendant's Exhibit HH.*

to clear a substantial amount from the Yokohama Specie Bank New York Agency's funds to the Oriental Consolidated Mining Company, an American company, representating what appears to be a return of capital. It is now hoped that the Treasury will grant a license permitting the Yokohama Specie Bank's New York Agency (including such authority as may be administering or liquidating the affairs of the Agency) to pay and for us to receive the remittance which has been pending since August and which as you know
1487 covers transactions of a purely commercial nature made long before any hostilities and as far as importations and sale of products is concerned, before any freezing regulations were in force.

If there is any delay in the Treasury granting a license I would greatly appreciate it if you would give us an opportunity of talking the matter over with you. I would be glad to go to Washington any time at your convenience.

Yours very truly,

E. T. SINGER
Treasurer.

1488

ETS:vjn:mk
Enclosures

Defendant's Exhibit HH.

Clipping from New York Times December 24, 1941.

(See Opposite ☞)

NEW YORK TIMES
DECEMBER 24, 1941

CLAIM HERE SETTLED BY JAPANESE BANK

Agency Arranged on Dec. 2 to Pay Off Large Future Debt

An offer made by a Japanese bank agency here on Dec. 2, five days before the attack on Pearl Harbor, to settle immediately for cash payments scheduled to be made to an American company through 1942 and 1943 was disclosed in Supreme Court yesterday. Justice Ferdinand Pecora signed an order authorizing the State Superintendent of Banks, as liquidator of the Yokohama Specie Bank, Ltd., New York Agency, to pay $4,428,750 from the agency's funds to the Oriental Consolidated Mining Company to carry out the compromise settlement agreement.

The bank agency, which was closed on Dec. 8 and taken over by the Superintendent of Banks for liquidation, was guarantor of payments to be made to the American company by the Nihon Kogyo Kabushiki Kaisha, a Japanese mining concern, under a 1939 agreement by which the Japanese concern bought the American company's properties in Korea for $8,175,000, payable in installments. A balance of about $6,000,000 was still due when the bank agency made the offer on Dec. 2 for an immediate cash settlement.

The offer was accepted by the American company on Dec. 5, three days before the United States and Japan went to war.

The settlement includes payment of interest on $5,905,000 from Sept. 1 to the date of payment, in addition to the principal sum of $4,428,750, all to be paid by Dec. 29.

George A. Porter, deputy superintendent of banks, said in an affidavit that a United States Treasury license had been issued for transfer of the funds and that the New York agency had on hand $17,000,000 in cash, more than twice the amount needed to pay all creditors.

He said the balance remaining would be subject to seizure by the United States Government and that payments to the American company would be in the best interest of all concerned. Frederic Bull, chairman of the board of Oriental, said the company had many British as well as American stockholders.

Encl. in Letter to H.V. Hoyt
Copy to AWD from
E.J. Kenney
12/29/41

7

(p. 497)

1492

Defendant's Exhibit II.

1493 *(See Opposite ☞)*

1494

(P.499 - Page 1)

SV-5111

Application No. NY 679033

APPLICATION FOR A LICENSE TO ENGAGE IN A FOREIGN EXCHANGE TRANSACTION, TRANSFER OF CREDIT, PAYMENT, EXPORT OR WITHDRAWAL FROM THE UNITED STATES, OR THE EARMARKING, OF GOLD OR SILVER COIN OR BULLION OR CURRENCY, OR THE TRANSFER, WITHDRAWAL OR EXPORTATION OF, OR DEALING IN, EVIDENCES OF INDEBTEDNESS OR EVIDENCES OF OWNERSHIP OF PROPERTY.*

(To be executed and filed in duplicate with the Federal Reserve Bank for the district or with the Governor or High Commissioner of the territory or possession of the United States in which the applicant resides or has his principal place of business or principal office or agency. If the applicant has no legal residence or principal place of business or principal office or agency in a Federal Reserve District or such territory or possession the application should be filed with the Federal Reserve Bank of New York or the Federal Reserve Bank of San Francisco.)

To the Secretary of the Treasury
Washington, D. C.

DATE: February 23, 1946

Sir:

In accordance with Executive Order No. 8389 of April 10, 1940, as amended, regulating transactions in foreign exchange, etc., and the regulations and rulings issued thereunder, the undersigned hereby applies for a license to execute the transaction described below:

A. (1) The name of the applicant is [redacted]

(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal [redacted] at:

[redacted] (street) [redacted] (city) [redacted] (state) U.S.A. (country)

(3) Applicant is and has been a citizen of [redacted]

since [redacted] (month) 1 (day) [redacted] (year)

(4) The nationality under the Order** of the applicant is [redacted]

(5) Since [redacted] the applicant has been engaged in the business of

[redacted] (State nature of business)

(4) The nationality under the Order** of the applicant is [redacted]

(5) Since [redacted] the applicant has been engaged in the business of

[redacted] (State nature of business)

B. The applicant desires a license in order to:
(State in detail the nature, purpose and amount of the transaction, and the name, address, nationality under the Order** and extent of interest of every party, including the applicant, involved or interested in the transaction.)

Effect the following accounting entry:

	Debit	Credit
New York Claims Account	$ 557,561.25	
General Profit & Loss Account		$ 557,561.25

On August 20, 1941 our Yokohama, Japan, branch office remitted $557,561.25 to us through The Yokohama Specie Bank, Ltd., New York Agency. In order to permit payment by the New York Agency of The Yokohama Specie Bank, we applied for a U. S. Treasury License. Our application for a License was denied and subsequently, after war with Japan was declared, The Yokohama Specie Bank, Ltd., New York Agency, was taken over by the New York State Superintendent of Banks for liquidation. Subsequently, under U. S. Treasury Department License No. NY 679033-H, SV-767 dated July 16, 1942, we wrote off the amount of $557,561.25 to our General Profit & Loss Account as a bad debt.

In order to prove our claim against The Yokohama Specie Bank, Ltd., New York Agency, and the State Superintendent of Banks as liquidator of its assets, a suit was filed for the recovery of the $557,561.25. Decisions were rendered adverse to Plaintiff-Bank in both the Supreme Court of the State of New York and the Appellate Division, First Department. Under date of November 30, 1944, the judgments of the lower courts were reversed by the New York State Court of Appeals. In view of this latest judgment, we are reversing our previous write-off of this item as a bad debt and are now setting this item up as a claim in our New York Office's Claims Account.

(P.499 - Page 2)

C, The applicant represents and warrants that no party other than those mentioned in item B above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein. If there are any exceptions, note them below.

D. The applicant represents and warrants that, except as specifically stated, he has personal knowledge of all the facts herein stated; that the same are correct and true; and that he does not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein.

E. The applicant represents and warrants that he has complied, and agrees that he will comply, in all respects, with all provisions of Section 3(a) of the Trading with the enemy Act, as amended, Executive Order No. 8389 of April 10, 1940, as amended, and all regulations, rulings, orders and instructions issued by the Secretary of the Treasury thereunder or under the authority of section 5(b) of the Trading with the enemy Act, as amended, and with any and all licenses issued to the applicant pursuant thereto.

F. The applicant represents and warrants that no other application for a license authorizing the transaction here involved has been filed or is pending, except as follows:

STANDARD-VACUUM OIL COMPANY

COPY H. MIDBO

.....(Signature of applicant)

H. MIDBO, ASSISTANT TREASURER.

(If this application is filed by an agent, attorney, or other person, for or on behalf of the applicant, the following statement should be executed.)

I,.....; certify that I am the .....(State relationship to applicant)

of.....(Name of applicant).....who is the applicant in the above application for a license; that I am duly authorized to make the foregoing application on behalf of the applicant; that, except as otherwise specifically stated, I have personal knowledge of all the facts herein stated; that the same are true and correct; and that I do not have knowledge of any material facts in connection with said application which are not fully and accurately set forth herein.

.....(Signature)

.....(Address)

above application for a license; that I am duly authorized to make the foregoing application on behalf of the applicant; that, except as otherwise specifically stated, I have personal knowledge of all the facts herein stated; that the same are true and correct; and that I do not have knowledge of any material facts in connection with said application which are not fully and accurately set forth herein.

.....(Signature of applicant)

.....(Address)

RECOMMENDATION OF FEDERAL RESERVE BANK

The above application is forwarded to the Secretary of the Treasury with the recommendation that a license should be (granted).

(denied).

Remarks:.....

.....

.....

.....

.....

.....

NOTE If this application is executed outside of the United States, it must be executed under oath before a diplomatic or consular officer of the United States.

If this application covers gold in any form the provisions of the Provisional Regulations issued under the Gold Reserve Act of 1934 must also be complied with.

Attention is directed to Section 35(A) of the United States Criminal Code, which provides, in part:

"• • • Whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States • • •, shall be fined not more than $10,000 or imprisoned not more than five years, or both." (R.S. April 4, 1918, ch. 59, 40 Stat. 1097 (U.S.C. tit. 18, sec. 80))

Copies of this form may be obtained on request, at any Federal Reserve Bank, mint or assay office, or the Treasury Department, Washington, D. C.

500

1498

Defendant's Exhibit JJ.

1499

(See Opposite ☞)

1500

FOREIGN FUNDS CONTROL

(P.501)

License No. N. Y. 679033-E

Date: April 1, 1945

LICENSE

(GRANTED UNDER THE AUTHORITY OF EXECUTIVE ORDER NO. 8389 OF APRIL 10, 1940, AS AMENDED, AND THE REGULATIONS AND RULINGS ISSUED THEREUNDER)

To Standard Vacuum Oil Company (Ins. in Delaware) (SV-2018)
Name of Licensee

26 Broadway, New York, New York
Address of Licensee

Sirs:

1. Pursuant to your application of February 13, 1945, the following transaction is hereby licensed:

Effect the following accounting entry:

	Debit	Credit
New York Claims Account	$557,561.25	
General Profit & Loss Account		$557,561.25

* * * * * * * *

c/o Mr. A. G. Vanderbeek
Att Mr. R. H. H. Beach

2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, among others, that you will comply in all respects with Executive Order No. 8389 of April 10, 1940, as amended, the Regulations and Rulings issued thereunder and the terms of this license.

3. The licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank through which the license was issued, the Postmaster at the place of mailing or the Collector of Customs at the port of exportation.

4. This license expires 20 days from the date of its issuance, is not transferable, is subject to the provisions of Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder and may be revoked or modified at any time in the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

Issued by direction and on behalf of the Secretary of the Treasury:

FEDERAL RESERVE BANK OF NEW YORK

By _____

The Act of October 6, 1917, as amended, provides in part as follows:

"*** Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both."

NOTE: If this license covers gold in any form the provisions of the Provisional Regulations issued under the Gold Reserve Act of 1934 must also be complied with.

ORIGINAL

1504

Stipulation of Facts.

[Same Title.]

The attorneys for the parties hereto hereby stipulate as follows:

1. Copies and translations of the following records of the Yokohama office of The Yokohama Specie Bank, Ltd., received by the Superintendent of Banks on October 14, 1946, through the War Department, shall be deemed marked in evidence as plaintiff's Exhibits "19" to "26", respectively:

1505

Exhibit "19" — Application by Standard Vacuum Oil Co. (hereinafter referred to as "Standard") dated January 20, 1941, and permit No. 427 dated February 8, 1941;

Exhibit "20" — Application by Standard dated February 26, 1941, and permit No. 1043 dated March 15, 1941;

Exhibit "21" — Application by Standard dated March 7, 1941, and permit No. 1044 dated March 15, 1941;

Exhibit "22" — Application by Standard dated February 26, 1941, and permit No. 1045 dated March 15, 1941;

1506

Exhibit "23" — Foreign Exchange Contract dated February 13, 1941, re permit No. 427;

Exhibit "24" — Foreign Exchange Contract dated March 20, 1941, re permit No. 1043;

Exhibit "25" — Foreign Exchange Contract dated March 20, 1941, re permit No. 1044;

Exhibit "26" — Foreign Exchange Contract dated March 20, 1941, re permit No. 1045.

2. Pursuant to the contracts set forth in Exhibits 23 to 26, inclusive, Standard in Yokohama on August 29, 1941, instructed the Yokohama office of The Yokohama Specie Bank, Ltd., to debit its account in the sum of 2,378,928 yen and the Yokohama office of The Yokohama Specie Bank, Ltd., thereupon and in accordance with its general practice:

(a) Debited the yen balances maintained on its books in the name of Standard in Yokohama in the sum of 2,378,928 yen; 1508

(b) Credited the dollar account of the New York Agency on its books with the dollar equivalent thereof, to wit, $557,561.25;

(c) Forwarded to the New York Agency the cable marked Exhibit "11".

The Superintendent of Banks received the foregoing information through the War Department on October 14, 1946.

3. The annexed photostatic copies of Standard's application No. NY 679033 and Treasury license dated April 3, 1945, shall be deemed marked in 1509 evidence as the Superintendent's Exhibits "II" and "JJ", respectively, solely for the purpose of proving the nature of the application but not as proof of the truth of the statements contained therein.

4. The applications made by Standard for licenses to communicate with Japan on commercial subjects, referred to in plaintiff's testimony (Tr. p.15) did not include an application for a license specifically to obtain records maintained by the Yokohama office of Standard, and Standard did not apply for such license.

1510 *Stipulation of Facts.*

5. Without prejudice to the objections heretofore made by the respective parties to evidence of a similar character, it is agreed that, subject to the approval of the court, this stipulation and the exhibits annexed hereto shall be deemed part of the record of the trial.

December 11, 1946.

CRAVATH SWAINE & MOORE
Attorneys for the Plaintiff,

1511

EDWARD FELDMAN
Attorney for the Defendant,
Elliott V. Bell, Superintendent of Banks.

Approved:

L. C.
J. S. C.

1512

Stipulation as to Declaration of Dividend. 1513

[Same Title.]

It is hereby stipulated between the attorneys for the respective parties hereto as follows:

1. Pursuant to the provisions of Section 627 of the Banking Law, on May 2, 1946, the Superintendent of Banks, as liquidator of the New York Agency of Yokohama Specie Bank, Ltd., declared and paid or set apart for payment a dividend of 100% of the principal amount of all claims and 1514
accounts payable accepted or otherwise duly established, and set aside a reserve sufficient in amount to pay such dividend upon all claims and accounts payable in litigation and not finally determined. No interest dividend in the liquidation of the New York Agency of Yokohama Specie Bank, Ltd. has been declared or paid.

2. This stipulation shall, subject to the approval of the Court, be deemed part of the Record.

Dated: September 29, 1947. 1515

Edward Feldman,
Attorney for Defendant, Superintendent of Banks of the State of New York.

Cravath, Swaine & Moore,
Attorneys for Plaintiff.

Approved:

L. C.,
Lloyd Church,
Justice of the Supreme Court.

1516

Stipulation as to Exhibits.

[SAME TITLE.]

IT IS HEREBY STIPULATED between the attorneys for the respective parties hereto, subject to the approval of the Court, as follows:

1. The following exhibits or parts thereof as indicated need not be included in the Record on Appeal herein:

1517

(A) Exhibit 8 (page 1 (rear), pages 5, 6, 7 and 8)—page 1 (rear) consists of instructions as to filing the proof of claim; pages 5, 7 and 8 are included in the record as Exhibits 1, 3 and 7 respectively.

(B) Exhibit 10—certified copy of resolution of Board of Directors of Standard Vacuum Oil Company and proposed assignment.

(C) Exhibit B (pages 2, 3)—bookkeeping memoranda.

1518

(D) Exhibit C (reverse)—bookkeeping memorandum.

(E) Exhibit J (page 11)—copy of Exhibit 7.

(F) Exhibit K (reverse)—bookkeeping memorandum.

(G) Exhibit M (page 1, reverse and page 2)—bookkeeping memorandum and copy of Exhibit L, page 3.

(H) Exhibit P (page 3)—duplicate of Exhibit P (page 2).

2. The indicated parts of the following Exhibits need not be included in the Record on Appeal herein, but the following shall be substituted:

(A) Exhibit 9 (page 2) and in place thereof, at the foot of the preceding page, the following be added "acknowledged on August 10, 1943."

(B) Exhibit J (pages 4, 14) and in place thereof, at the foot of the preceding pages of Exhibit J, the following be added respectively: "(verified by Eugene T. Singer April 12, 1944)" and "(verified by Eugene T. Singer February 25, 1946)".

(C) Exhibit EE (page 3) and in place thereof, the following be added at the foot of the preceding page: "(verified by Edward Feldman September 16, 1946)".

June 16, 1947.

EDWARD FELDMAN,
Attorney for Defendant, Superintendent of Banks of the State of New York.

CRAVATH, SWAINE & MOORE,
Attorneys for Plaintiff.

Approved:

L. C.,
Lloyd Church,
Justice of the Supreme Court.

1522 **Opinion.**

C. C. Index
No. 1320—1944.

CHURCH, J.:

This is an action brought by Eugene T. Singer, as assignee of Standard-Vacuum Oil Company (hereinafter called Standard), against the Superintendent of Banks of the State of New York (hereinafter called the Superintendent) to establish a claim in the sum of $557,561.25 against the
1523 assets in New York of The Yokohama Specie Bank, Ltd. now in the possession of the Superintendent, pursuant to Section 606 (4) of the Banking Law.

A motion for summary judgment was made by the Superintendent in 1944. This motion was granted by the Supreme Court (47 N. Y. S. (2d) 881), and the judgment was affirmed by the Appellate Division, (267 App. Div. 980, 48 N. Y. S. (2d) 799). The Court of Appeals reversed the judgment of the Supreme Court and denied the motion of the Superintendent on the ground that there
1524 were issues of fact to be tried (293 N. Y. 542). The law of the case has been established by the Court of Appeals.

By the credible oral testimony, with the natural inferences to be drawn therefrom, and the documentary evidence introduced at the trial and subsequent to the trial under the stipulation approved by the court, the plaintiff has proved by the fair preponderence of the credible evidence substantially the cause of action pleaded in the complaint.

The facts deemed essential have been found as noted in the margins of the proposed findings of

facts and conclusions of law. Settle decision and judgment for the plaintiff in accordance therewith.

Dated, February 19, 1947.

L. C.,
J. S. C.

Filed Feb. 19, 1947
New York
County Clerk's office.

1526

Affidavit of No Other Opinion.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

HENRY L. BAYLES, being duly sworn deposes and says: I am an attorney and counsellor-at-law, associated with Edward Feldman, attorney for the defendant - appellant - respondent herein and familiar with all the proceedings had herein. No Opinion was rendered by the Trial Court below except that printed at page 508 of the Record. 1527

HENRY L. BAYLES.

Sworn to before me this
25 day of November, 1947.

RICHARD J. LARGE
Notary Public in the State of New York
Residing in Westchester County
Cert. Filed in N. Y. Co. Clk's No. 837
Commission Expires March 30, 1949

1528 **Stipulation Settling Case.**

IT IS HEREBY STIPULATED that the foregoing record contains all of the evidence and testimony offered and given upon the trial of this action (except those exhibits omitted pursuant to stipulation approved by the Court), together with all objections and exceptions of all parties taken at the trial, the proposed findings of fact and conclusions of law, the opinion, decision, judgment, and that the same be settled and ordered on file as the case on appeal without further notice.

1529

Dated: New York, N. Y., December 3, 1947.

EDWARD FELDMAN,
Attorney for Defendant-Appellant-Respondent.

CRAVATH, SWAINE & MOORE,
Attorneys for Plaintiff-Respondent-Appellant.

1530 **Order Settling Case.**

On the foregoing stipulation the foregoing record which contains all of the evidence (except those exhibits omitted pursuant to stipulation approved by this Court) is hereby settled and ordered on file as the case on appeal in this action.

Dated: New York, N. Y., ~~December~~ March 5, 1948.

LLOYD CHURCH,
Justice of the Supreme Court.

Stipulation Waiving Certification. 1531

IT IS HEREBY STIPULATED that the foregoing are true and correct copies of the judgment roll, the notices of appeal, the case as settled, the opinion, decision, proposed findings of fact and conclusions of law, now on file in the office of the Clerk of the County of New York; that certification thereof is hereby waived; and that an order be entered directing the filing of the record in the office of the Clerk of the Appellate Division, First Department, without further notice.

1532

Dated: New York, N. Y., December 3, 1947.

EDWARD FELDMAN,
Attorney for Defendant-Appellant-Respondent.

CRAVATH, SWAINE & MOORE,
Attorneys for Plaintiff-Respondent-Appellant.

Order Filing Record in Appellate Division. 1533

Pursuant to Section 616 of the Civil Practice Act, it is ordered that the foregoing printed record be filed in the office of the Clerk of the Appellate Division, Supreme Court, First Judicial Department.

Dated: New York, N. Y., ~~December~~ March 1, 1948.

LLOYD CHURCH,
Justice of the Supreme Court.

ADDITIONAL PAPERS TO COURT OF APPEALS

Notice of Appeal by Superintendent of Banks to Court of Appeals. 1537

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

EUGENE T. SINGER,
Plaintiff,
against

THE YOKOHAMA SPECIE BANK, LTD. and ELLIOT V. BELL, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendants.

1538

Index 1320-1944.

Sirs:

PLEASE TAKE NOTICE, that pursuant to leave granted by the Court of Appeals of the State of New York by an order duly made and filed in the office of the Clerk of said Court on the 7th day of October 1948, the defendant, Elliot V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., hereby appeals to the Court of Appeals of the State of New York from the judgment of the Appellate Division of the Supreme Court, First Judicial Department, entered and filed in the office of the Clerk of the County of New York, on May 19, 1948, and from the 1539

1540 *Notice of Appeal by Superintendent of Banks, to Court of Appeals.*

order of said Appellate Division, dated and filed May 17, 1948, upon which said judgment is based, which unanimously affirmed, without opinion and without costs, the judgment of the Supreme Court, New York County, dated March 13, 1947, and entered and filed in the office of the Clerk of the County of New York on March 15, 1947, adjudging (1) that plaintiff is a creditor of Yokohama Specie Bank, Ltd., whose claim arose out of a transaction with its New York Agency and his
1541 claim is entitled to preference against the assets in New York of the Yokohama Specie Bank, Ltd., pursuant to the provisions of Section 606, Subdivision 4 (a) of the Banking Law of the State of New York; and (2) that plaintiff recover of the defendant, Elliot V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of the Yokohama Specie Bank, Ltd., the sum of $557,561.25, together with interest thereon from October 29, 1942, in the sum of $146,279.62, and costs and disbursements of $141.10, amounting
1542 in the aggregate to the sum of $703,981.97.

Dated: New York, N. Y., October 14, 1948.

Yours, etc.

EDWARD FELDMAN,
Attorney for defendant, Elliot V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Office & P. O. Address,
80 Spring Street,
Borough of Manhattan,
City of New York.

Notice of Appeal by Plaintiff to Court of Appeals. 1543

To:

CRAVATH, SWAINE & MOORE, Esqs.,
Attorneys for Plaintiff,
15 Broad Street,
Borough of Manhattan,
City of New York.

ARCHIBALD R. WATSON, Esq.,
Clerk of the County of New York.

1544

Notice of Appeal by Plaintiff to Court of Appeals.

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

EUGENE T. SINGER,
Plaintiff,

against

1545

THE YOKOHAMA SPECIE BANK, LTD. and ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendants.

Index No. 1320-1944.

Sirs:

PLEASE TAKE NOTICE, that pursuant to leave granted by order of the Court of Appeals of the

1546 *Notice of Appeal by Plaintiff to Court of Appeals.*

State of New York dated October 7, 1948, plaintiff hereby appeals to said Court of Appeals from the judgment of the Appellate Division, First Department, entered in the office of the Clerk of the County of New York on May 19, 1948, and the order of said Appellate Division entered May 17, 1948, insofar as said judgment and order unanimously affirmed that part of the judgment of the Supreme Court, New York County entered in the office of the Clerk of the County of New York on
1547 March 15, 1947, which failed to award to the plaintiff interest from January 14, 1942 to October 29, 1942, upon the principal amount of plaintiff's claim.

October 19, 1948.

Yours, etc.,

CRAVATH, SWAINE & MOORE,
Attorneys for Plaintiff,
15 Broad Street,
New York, N. Y.

1548

To:

EDWARD FELDMAN, Esq.,
Attorney for defendant, Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
80 Spring Street,
New York, N. Y.

ARCHIBALD R. WATSON, Esq.,
Clerk of the County of New York.

Judgment of Affirmance Appealed From. 1549

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

EUGENE T. SINGER,
Plaintiff,
against
THE YOKOHAMA SPECIE BANK, LTD., and ELLIOTT V. BELL as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendants.

Index No. 1320-1944. 1550

Defendant Elliott V. Bell as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd. having 1551 appealed to the Appellate Division of the Supreme Court, First Judicial Department from the judgment entered herein on the 15th day of March, 1947, in favor of plaintiff for $703,981.97 and plaintiff having appealed to said Appellate Division from the aforesaid judgment in so far as said judgment failed to include interest on the sum of $557,561.25 from January 14, 1942 to October 29, 1942, and said Appellate Division having made and filed an order on May 17, 1948, unanimously affirming said judgment so appealed from, without costs,

1552 *Judgment of Affirmance Appealed from.*

Now upon the Remittitur of said Appellate Division and the aforesaid Order of Affirmance, dated May 17, 1948, it is

ADJUDGED that the judgment entered herein on March 15, 1947, be, and hereby is, in all things, affirmed without costs.

Judgment signed and entered this 19th day of May, 1948.

ARCHIBALD R. WATSON,
Clerk.

1553

1554

Order of Affirmance Appealed From. 1555

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 17th day of May, 1948.

Present:

Hon. DAVID W. PECK,
Presiding Justice,
" EDWARD S. DORE,
" ALBERT COHN, 1556
" JOSEPH M. CALLAHAN,
" JOHN VAN VOORHIS,
Justices.

EUGENE T. SINGER,
Plaintiff-Respondent-Appellant,

against

THE YOKOHAMA SPECIE BANK, LTD.,
Defendant,

and

ELLIOTT V. BELL as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Defendant-Appellant-Respondent.

896. 1557

An appeal having been taken to this court by the defendant from a judgment of the Supreme Court, New York County, entered on the 15th day

1558 *Order of Affirmance Appealed From.*

of March, 1947, and an appeal having been taken by the plaintiff from the aforesaid judgment in so far as said judgment failed to include interest on the sum of $557,561.25 from January 14, 1942 to October 29, 1942,

And said appeals having been argued by Mr. A. R. Connelly of counsel for the plaintiff, by Mr. Edward Feldman of counsel for the defendant, and a brief having been submitted for the United States of America as *amicus curiae;* and due deliberation having been had thereon,

1559 It is unanimously ordered and adjudged that the judgment so appealed from be and the same is hereby, in all things, affirmed without costs.

Enter:

GEORGE T. CAMPBELL,
Clerk.

1560

Order Granting Leave to Appeal. 1561

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany, on the seventh day of October A. D. 1948.

Present:

Hon. JOHN T. LOUGHRAN,
Chief Judge, Presiding.

EUGENE T. SINGER, 1562
Plaintiff,

vs.

THE YOKOHAMA SPECIE BANK, LIMITED,
Defendant,

and ELLIOTT V. BELL, Superintendent of Banks of The State of New York, as Liquidator of The Business and Property in The State of New York of The Yokohama Specie Bank, Ltd., 1563
Defendant.

Motions for leave to appeal to the Court of Appeals in the above cause having heretofore been made herein upon the part of the plaintiff and the defendant, Elliott V. Bell, Superintendent of Banks of The State of New York, papers having been duly submitted thereon and due deliberation having been thereupon had, it is

1564 *Affidavit of No Opinion by Appellate Division.*

ORDERED, that the said motions be and the same hereby are granted.

A Copy

(SEAL)

RAYMOND J. CANNON,
Deputy Clerk.

1565

Affidavit of No Opinion by Appellate Division.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

HENRY L. BAYLES, being duly sworn, deposes and says: That he is an attorney and counsellor-at-law associated with EDWARD FELDMAN, attorney for the defendant-appellant-respondent herein and is familiar with all prior proceedings had herein. That no opinion was rendered by the Ap-
1566 pellate Division, First Department, in affirming the judgment appealed from.

HENRY L. BAYLES.

Sworn to before me this 29th day of October, 1948.

RICHARD J. LARGE
Notary Public in the State of New York
Residing in Westchester County
Cert. Filed in N. Y. Co. Clk's No. 837
Commission Expires March 30, 1949.

Stipulation Waiving Certification. 1567

It is hereby stipulated that the foregoing consists of true and correct copies of the Notices of Appeal to the Court of Appeals, the judgment of the Appellate Division appealed from, and all the papers upon which the Court below acted in making the judgment appealed from, and the whole thereof, now on file in the office of the Clerk of the County of New York, and certification thereof by said clerk is hereby waived.

Dated: October 29, 1948. 1568

CRAVATH, SWAINE & MOORE,
Attorneys for Plaintiff-Respondent-Appellant.

EDWARD FELDMAN,
Attorney for Defendant-Appellant-Respondent.

1569

[fol. 524] STATE OF NEW YORK,
Court of Appeals,
State Reporter's Office, ss.:

I, Leland F. Coss, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Singer v. Yokohama Specie Bank decided by the Court of Appeals on the 30th day of November, 1944, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 14th day of June, 1949.

Leland F. Coss, As Reporter of the Court of Appeals of the State of New York. (Seal).

Attest: (L. S.) John Ludden, Clerk of the Court of Appeals.

STATE OF NEW YORK,
Court of Appeals.

I, John T. Loughran, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that John Ludden is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that Leland F. Coss is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Singer v. Yokohama Specie Bank decided by the said Court of Appeals on the 30th day of November, 1944, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of John Ludden, as clerk of said court, appended thereto is the true and genuine signature of said John Ludden, and

the signature of Leland F. Coss as reporter of said court, appended thereto is the true and genuine signature of said Leland F. Coss.

In witness whereof, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York on the sixteenth day of June in the year one thousand nine hundred and forty-nine.

John T. Loughran, As Chief Judge of the Court of Appeals of the State of New York.

[fol. 525] EUGENE T. SINGER, Appellant,

v.

THE YOKOHAMA SPECIE BANK, LIMITED, Defendant, and Elliott V. Bell, as Superintendent of Banks of the State of New York, Respondent

Decided November 30, 1944

LEWIS, J.:

The Yokohama Specie Bank, Ltd., to which it will be convenient to refer as "Yokohama Species", is a banking corporation incorporated under the laws of the Empire of Japan and was formerly licensed by the respondent Superintendent of Banks to transact a limited banking business in the State of New York. Under that license Yokohama Specie was permitted to maintain in this State an agency for the transaction of such a banking business. On December 8, 1941, after a state of war had been declared to exist between the United States and Japan, the Superintendent of Banks, acting pursuant to section 606 of the Banking Law, took possession for the purpose of liquidation of the business, property and affairs of Yokohama Specie within the State of New York and suspended the operation of its New York Agency. While such liquidation was in process the plaintiff asserted his right as a creditor of the New York Agency under an assignment from Standard Vacuum Oil Company—to which reference will be made as "Standard"—and filed with the Superintendent of Banks on November 21, 1942, a claim for $557,561.25 against funds of the New York Agency in the possession of

the Superintendent. That claim, based upon facts which [fol. 526] are not here in dispute and are presently to be considered, was rejected by the Superintendent of Banks upon the ground that applicable law afforded no basis for its payment.

As a means to enforce his claim, the plaintiff instituted the present suit, wherein, upon motion by the defendant at Special Term, the action was severed to permit its continuance against Yokohama Specie and the complaint was dismissed against the Superintendent of Banks. The Appellate Division has granted to the plaintiff leave to appeal from its order unanimously affirming the judgment entered at Special Term and has certified that a question of law is involved which should be reviewed by this court. That question of law arises from the following facts:

On August 27, 1941, Standard, through its Yokohama office delivered to Yokohama Specie in Japan the yen equivalent to $557,561.25 with instructions to pay that dollar amount to Standard in New York. Two days later, on August 29, 1941, the assistant-treasurer of Standard in New York was advised by telephone by the cashier of the New York Agency of Yokohama Specie that the New York Agency had received from Yokohama Specie the telegraphic transfer of $557,561.25 which amount was available for payment to Standard. In response to this advice the assistant-treasurer of Standard stated to the cashier of the New York Agency that Standard was making the necessary application to the United States Treasury Department for a license which would permit the payment by the New York Agency to Standard. On September 2, 1941, Standard received at its New York office the following confirmatory letter:

"The Yokohama Specie Bank, Limited
New York Agency
Equitable Building

New York, August 29th, 1941.

Standard Vacuum Oil Company, 10 Broadway, New York City, New York.

Att. Mr. Mitbo:

GENTLEMEN:

Referring to our telephone conversation of today, we wish to advise you that we have received telegraphic in-

structions from our Yokohama Office to pay you the sum of $557,561.25.

We understand that you are filing an application with The Treasury Department of the U. S. A. for a License in order to permit us to make this payment to you.

Awaiting your reply regarding this matter, we remain

Yours very truly, The Yokohama Specie Bank, Ltd.,

(signature illegible) p. p. Agent"

During the preparation by Standard of the application to the Treasury Department a representative of Standard [fol. 527] was advised by telephone by a representative of the New York Agency that the payment would be made to Standard from funds of the New York Agency on deposit with Guaranty Trust Company of New York.

Before any payment was made by the New York Agency to Standard there occurred the attack by Japan at Pearl Harbor. Then followed the declaration of war and promptly thereafter the Superintendent of Banks took possession of the funds of the New York Agency and proceeded to liquidate the same pursuant to section 606 of the Banking Law. That statute, after specifying grounds upon which the Superintendent may take possession of the business and property in this State of a foreign banking corporation, provides in part: "4 (a) * * * *the claims of creditors of such corporation arising out of transactions had by them with its New York agency* or agencies or whose names appear as creditors on the books of such agency or agencies shall be preferred against the assets of such corporation in this state without prejudice to their right to share in the other assets of such corporation." (Italics supplied.)

Our problem is concerned chiefly with the interpretation and application of the italicized portion of the statute quoted above.

The plaintiff concedes that neither his name nor the name of his assignor, Standard, appears as a creditor on the books of the New York Agency of Yokohama Specie. However, the plaintiff asserts that, within the provisions of section 606, subdivision 4, paragraph (a), its assignor, Standard, had a *transaction* with the New York Agency the details of which, when considered together, were sufficient in law to qualify for payment the claim in suit.

The Superintendent of Banks has thus far successfully maintained that the deposit by Standard with Yokohama

Specie in Japan and the subsequent telegraphic instructions by Yokohama Specie to its New York Agency, followed by the communications, mentioned above, from that Agency to Standard in New York, did not create enforcible rights in favor of Standard arising out of a *transaction* by Standard with such Agency within the terms of section 606, subdivision 4, paragraph (a) of the Banking Law.

Prior to December 8, 1941, the date when the declaration of war caused the Superintendent of Banks to take possession of the business and property of Yokohama Specie in New York, the Superintendent had issued to that foreign corporation a statutory license under which it was permitted "* * * to maintain an agency [in the City of New York] for the purpose of transacting the business of * * * receiving money for transmission or transmitting the same by * * * cable or otherwise * * * ". When on August 27, 1941, Yokohama Specie at its home office in Japan accepted funds from Standard it thereby became indebted to [fol. 528] Standard in the amount then deposited. When on August 29, 1941, following instructions from Standard, and acting under its New York license, Yokohama Specie transmitted those funds by cable from Japan to its New York Agency, we think the consequent oral and written communications, to which reference has been made—by which the New York Agency advised Standard that it was in funds from its Yokohama home office which it was instructed to pay to Standard—served to create an enforcible legal obligation by the New York Agency to make such payment. (See *Sayer* v. *Wynkoop*, 248 N. Y. 54, 58-60; *Goodwin* v. *Bowden*, 54 Me. 424, 425; *Griffin* v. *Weatherby* [1868] L. R. 3 Q. B. 753, 758-9; 2 Williston on Contracts [Rev. ed.], § 349, p. 1035; Mechem on Agency [2d ed.], p. 1072; Tiffany on Agency [2d ed.], p. 355.

The fact that Federal regulations governing transactions in foreign exchange prevent the payment to Standard until a license under Executive Order No. 8389, as amended, is procured does not make conditional the obligation of the New York Agency to pay. (See United States Treasury Department, General Ruling No. 12 (4) under Executive Order No. 8389 as amended; also *Feuchtwanger* v. *Central Hanover Bank*, 288 N. Y. 342.)

Our conclusion is that the course of dealing which culminated in the advice to Standard by Yokohama Specie's New York Agency, given in accord with instructions from

its home office in Japan, was a *transaction* had by a creditor (Standard) of a foreign corporation (Yokohama Specie) "with its New York agency," within the provisions of section 606, subdivision 4, paragraph (a) of the Banking Law. Any payment of funds by Yokohama Specie's New York Agency to Standard as an incident of such transaction is subject to the provisions of Executive Order No. 8389, as amended.

The judgments should be reversed and the motion by the Superintendent of Banks denied, with costs in all courts.

Lehman, Ch. J., Loughran, Rippey, Conway, Desmond and Thacher, JJ., concur.

Judgments reversed, etc.

[fol. 529] STATE OF NEW YORK,
Court of Appeals,
State Reporter's Office. ss.:

I, Leland F. Coss, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Singer v. Yokohama Specie Bank decided by the Court of Appeals on the 14th day of April, 1949, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 14th day of June, 1949.

Leland F. Coss, as Reporter of the Court of Appeals of the State of New York.

Attest: (L. S.) John Ludden, Clerk of the Court of Appeals. (Seal.)

STATE OF NEW YORK,
Court of Appeals:

I, John T. Loughran, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that John Ludden is the clerk of said court, having custody of

the seal of said court and of the decisions, minutes and records thereof, and that Leland F. Coss is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Singer v. Yokohama Specie Bank decided by the said Court of Appeals on the 14th day of April 1949, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of John Ludden, as clerk of said court, appended thereto is the true and genuine signature of said John Ludden, and the signature of Leland F. Coss, as reporter of said court, appended thereto is the true and genuine signature of said Leland F. Coss.

In witness whereof, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York on the sixteenth day of June in the year one thousand nine hundred and forty-nine.

John T. Loughran, as Chief Judge of the Court of Appeals of the State of New York.

[fol. 530] Eugene T. Singer, Appellant and Respondent,

v.

Yokohama Specie Bank, Ltd., Defendant, and Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in the State of New York of Yokohama Specie Bank, Ltd., Respondent and Appellant

Decided April 14, 1949

Fuld, J.:

This case and its companion, *Banque Mellie Iran* v. *Yokohama Specie Bank* (299 N. Y. 139) which we also decide today, arise out of the liquidation by the State Superintendent of Banks, of the New York Agency of Yokohama Specie Bank, Ltd., a Japanese national bank (hereinafter referred to as the New York Agency or as the Agency).

By the judgment before us, the Superintendent, as liquidator, is ordered to pay the principal of plaintiff's preferred claim against the New York Agency, together with interest from October 29, 1942. It is our conclusion that such payment has not been authorized in the manner required by applicable Federal freezing controls, and that the judgment appealed from must, consequently, be reversed.

[fol. 531] The transaction here engaging our attention falls within the ambit of Federal orders and regulations which became effective in July, 1941, a month before the acts underlying plaintiff's claim were performed in Japan (Executive Order No. 8832; Code of Fed. Reg., Cum. Supp., tit. 3, p. 969 [1941]). By that executive order, existing controls on the domestically-situated assets and property of nationals of certain foreign countries were extended to include the nationals of Japan. In general, the controls prevented any dealings in assets in blocked accounts unless licensed by the United States Treasury Department (Executive Order No. 8389; Code of Fed. Reg., Cum. Supp., tit. 3, p. 645 [1940]). Judicial as well as voluntary transfers were interdicted if such authorization was not obtained (U. S. Treasury General Ruling No. 12; Code of Fed. Reg., Cum. Supp., tit. 31, p. 8849 [1942]).

A survey of the underlying facts leaves no doubt that plaintiff's claim rests upon a transaction which was subject to the licensing requirements. In point of fact, we so ruled in 1944, when this litigation was before us in an earlier phase—on appeal from an order granting defendant's motion for summary judgment. (See *Singer* v. *Yokohama Specie Bank*, 293 N. Y. 542, 550.) Our detailed narrative on that occasion, we but briefly review here.

Plaintiff sought to establish his status as a preferred creditor of the New York Agency as a result of a transfer of funds, by forward foreign exchange cont cts, to his assignor, the Standard Vacuum Oil Company (hereinafter called Standard). The underlying dealings reached their culmination on August 29, 1941, when the Yokohama office of Standard delivered to the Yokohama Specie Bank in Japan the yen equivalent of $557,561.25, with instructions to pay that amount to Standard in New York. The bank cabled necessary orders to its New York Agency and the Agency straightaway advised Standard by telephone and letter that it was in receipt of payment instructions and that

funds were available. The letter concluded with the statement that "We understand that you [Standard] are filing an application with The Treasury Department of the U. S. A. for a License in order to permit us to make this payment to you."

Without delay, Standard applied for a license and in December, 1941, renewed the application. Both requests were, as presently will appear, categorically denied by the Federal authorities early in 1942.

In the meantime, the Japanese struck at Pearl Harbor, and on the day following, December 8, 1941, simultaneous with our declaration of war, the State Superintendent of Banks took possession of the New York Agency and its funds, for purposes of liquidation in accordance with the provisions of the Banking Law. Some months later—on November 21, 1942—plaintiff, as Standard's assignee, filed with the Superintendent a claim for $557,561.25 against funds of the New York Agency in the Superintendent's possession. After the Superintendent had rejected the [fol. 532] claim upon the ground that applicable law did not authorize its recognition, plaintiff brought suit in August, 1943, for an adjudication that his claim was one "arising out of a transaction" with the New York Agency and entitled to preference under this State's Banking Law (§ 606, subd. 4).

The lower courts awarded summary judgment in defendant Superintendent's favor. It was their view that the New York Agency, never having promised to pay Standard, had never incurred binding liability, and, since that was so, they concluded that plaintiff's claim did not arise "out of a transaction" with the Agency within the meaning of the Banking Law provision.

On appeal, the Superintendent urged that this was the correct construction of State law; and, joined by the United States as *amicus curiae*, also contended that Federal law, as embodied in the freezing controls, barred judicial recognition of plaintiff's claim, for the reason that such recognition would effect a prohibited transfer of blocked assets. We reversed on the question of State law, holding that plaintiff would—if he proved his allegations—establish an "enforcible legal obligation by the New York Agency", entitled to preference under the Banking Law (293 N. Y., *supra*, at pp. 549-550). However, impressed with the arguments advanced by defendant and the Government, based

upon the effect of the freezing regulations, we were careful to provide that plaintiff's payment was to be conditional upon his obtaining a Treasury license. On that point, our opinion brooks no argument. We recognized, we said, that "Federal regulations governing transactions in foreign exchange prevent the payment to Standard until a license under Executive Order No. 8389 * * * is procured", and we went on to say that "Any payment of funds by Yokohama Specie's New York Agency to Standard as an incident of such transaction is subject to the provisions of Executive Order No. 8389, as amended" (293 N. Y., *supra*, at p. 550).

At that time, there were in the record before us certain documents, bearing both generally and specifically upon the question of Federal clearance of this transaction. Among them were two papers which are now relied upon by plaintiff as establishing Treasury approval. We certainly did not at the time accord those documents that effect, as the language quoted from our decision clearly demonstrates. Indeed, it is interesting to note that plaintiff himself did not so regard them, for he flatly declared that, if his claim were recognized as one entitled to a preference under State law, he would "thereafter" apply for the necessary Treasury clearance before he sought to enforce payment. Accordingly, when the Superintendent, on motion for reargument, maintained that our decision had flouted and violated Federal freezing controls, we could not agree. Reasoning that payment of plaintiff's claim remained conditional upon, and subject to, his "thereafter" procuring authorization [fol. 533] in accordance with those regulations, we refused a rehearing (294 N. Y. 689).

The net effect of our decision was to deny the Superintendent's motion for summary judgment and to remit the matter for trial. That trial has now been held, and plaintiff's proof has satisfied both lower courts that the matters which we had earlier assumed to be true were true and that plaintiff has a claim entitled to recognition under the Banking Law. The record unquestionably sustains that finding.

In addition, the lower courts have now gone further and have held that plaintiff is entitled to immediate payment of his claim, with interest from October 29, 1942.

We believe that this conclusion is erroneous. If payment is to be ordered, it can only be done—and plaintiff

acknowledges this—on the basis of proof that plaintiff's claim has been licensed by Federal authorities; otherwise, the combined result of our decisions in this and the earlier *Singer* appeal (supra) would be to set at naught the Federal freezing controls program. We find no evidence of the necessary authorization. Not only is plaintiff u able to point to any treasury communication which is specifically addressed to his claim and authorizes its payment, but all the papers which relate in express terms to his claim explicitly withhold Treasury clearance. Nor, in our judgment, do the generally-worded documents upon which plaintiff relies license payment.

The first document to be considered is a communication, labeled a "License", dated January 14, 1942. Neither of the courts below found authorization in this letter, and, as already indicated, we agree with that conclusion. With the Superintendent of Banks in control of the branches of various foreign banks in New York State, including the New York Agency, the Federal Reserve Bank, on behalf of the Secretary of the Treasury, issued a general license, authorizing the Superintendent to make payment to depositors and to perform all other acts appropriate to orderly liquidation of the local assets of the Agency and nine other foreign banking corporations. The license expressly excluded from its scope transactions "involving a blocked national other than the bank in liquidation". Both the Yokohama office of Yokohama Specie Bank, Ltd., and Standard's branch office in Japan fell within that description: both were Japanese corporations and were, therefore, "blocked nationals." As a consequence, the transmittal of funds which they directed constituted a prohibited transfer and could be effected—we quote from the letter—"only as authorized by a general or specific license." Plaintiff, claiming under such a transfer, was not freed from the necessity of showing that consummation of the transfer was elsewhere authorized.

If there could be the least doubt that the January 14th license was not intended to clear plaintiff's claim, that doubt is laid at rest by consideration of a few of the attend- [fol. 534] ant circumstances. On the day before the license was issued—January 13, 1942—the Treasury Department specifically and in so many words denied the application for a clearance which Standard submitted on December 29, 1941. And, on the very same day that the letter was

issued—January 14th—the Treasury again notified Standard that its request for payment was rejected, this time in explicit denial of Standard's first application for clearance, dated August 29, 1941.

As noted, the lower courts did not read the January 14th paper as authorizing payment of plaintiff's claim. They did, however, take the view that payment was permitted by a second letter sent by the Federal Reserve Bank to the "Yokohama Specie Bank, Ltd., New York Agency, c/o Supt. of Banks of the State of New York". That letter read in this way:

"Reference is made to Supervisory Order No. 27, executed on September 23, 1942, by the Alien Property Custodian.

"In view of such order, *you are authorized by the Treasury Department, so far as Executive Order No. 8389, as amended, is concerned, to engage in any transaction on or after October 29, 1942, which might be engaged in without a specific license of the Treasury Department by a person who is not a national of any blocked country.*

"License No. NY 338836-SU is hereby revoked insofar as it applied to Yokohama Specie Bank, Ltd., New York Agency.

"It is suggested that you communicate with the office of the Alien Property Custodian concerning the applicability to your enterprise of any orders, rulings or regulations of such office." (Emphasis supplied.)

In claiming that the italicized sentence constitutes the essential authorization, plaintiff has misconstrued the letter's purpose and has misread its language. At the very most, the communication authorized the Superintendent to engage in noncontrolled transactions that came into existence "on or after October 29, 1942", not before that date. The letter is prospective; it looks to the future, not to the past. Indeed, it could not retroactively authorize past transactions, for General Ruling No. 4 of the Treasury Department (Code of Fed. Reg., 1943 Supp. tit. 31, p. 1307) expressly provided that no license or other authorization issued by the Treasury should be deemed to "authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides." There is, of course, no suggestion that the October 29th letter came within the exception to the

ban on retroactive licenses; it contains nothing which can be read as a specific exemption from the coverage of the quoted provision. It follows that the maximum effect of the October 29th letter was to license otherwise uncontrolled transactions which occurred thereafter.

Clearly, then, it constitutes no authorization, for payment may not be treated as "a transaction" separate and apart from the dealings which brought the claim into being. Pay- [fol. 535] ment is but "an incident" of the transaction (293 N. Y., *supra*, at p. 550). The "transaction", having occurred in 1941, was, of necessity, "engaged in" before October 29, 1942. It is of more than passing significance that the plaintiff had unsuccessfully applied for payment on two separate occasions in 1941; the circumstance that payment was again sought after October, 1942, could not, in any event, bring the matter within the coverage or the effect of that communication.

We go further, however. Even if we were to assume that payment could constitute a "transaction * * * after October 29, 1942," it is not of the type which is sanctioned by the Treasury letter. The Superintendent was thereby empowered to engage only in those transactions which might be carried on "without a specific license of the Treasury Department by a person who is not a national of any blocked country." Patently, payment of plaintiff's claim does not fall within that category. Since the transfer of funds involved the foreign office of the Yokohama bank and Standard's Japanese office, both nationals of Japan, and was to be performed at the direction of the foreign bank, it was a prohibited transfer and not a "transaction * * * which might be engaged in without a specific license * * * by a person who is nc a national of any blocked country."

This conclusion, it is evident, is required by the October 29th letter itself. The patent purpose of that communication was to place the New York Agency, with respect to transactions covered by the Executive Order, in the same position as any domestic bank. Let us assume, for instance, that the Yokohama bank in Japan had instructed, not its New York Agency but some domestic bank to pay out to Standard funds of the Japanese bank there deposited. In such a case, we unquestionably would have a "transaction to be performed at the direction" of an enemy national, the Yokohama bank, and refusal of a license would plainly have been dictated (General Ruling No. 12, *supra*). Since, obvi-

ously, the Agency was in no better position than a domestic bank, and since the transaction could not have been "performed" by a national of this country "without a specific license", it inevitably follows that payment could not be made by the Agency without such explicit authorization.

The effect of the October letter was but to advise the Superintendent that the Alien Property Custodian had taken control of enemy business enterprises and banks on behalf of the Federal Government and that thenceforward the Custodian would have primary responsibility for Federal supervision of the Agency. It did not eliminate plaintiff's need for clearance and that view, it may be repeated, was clearly reflected in our utterances on the prior appeal.

The other documents upon which plaintiff relies as authorizing his payment may be dimissed with but passing mention.

[fol. 536] A supervisory order—issued on September 28, 1942, by the Alien Property Custodian—was merely a recital that, "to the extent deemed necessary or advisable", the New York Agency was to be supervised in its dealings and payments by the Custodian. Nothing in the order intimated that it was intended to license or to authorize a transaction prohibited generally by the Executive Order. On the contrary, instead of relaxing restrictions, it made liquidation of the New York Agency subject to further regulatory authority. Only by doing violence to both the language of the order and the spirit of the Federal controls system and its regulations, could we conclude that the surrender of Treasury supervision to the Custodian was intended to defrost, at one stroke, all of the frozen accounts of enemy nationals.

Indeed, the Custodian made this plain by a letter of the same date, the next of the papers referred to by plaintiff. In essence, it instructed the Superintendent to continue liquidation of the New York Agency, subject to the additional controls outlined in the supervisory order. This was accomplished by requiring that there be submitted to the Custodian, in his discretion, any claims then before the Superintendent. Far from constituting blanket authority to the Superintendent to pay all and sundry claims pending, the letter was an affirmation that the Custodian would thereafter reserve a veto power, even as to those claims which the Superintendent himself recognized. It is upon this ground that the United States Government presses its

further point, which we neither pass upon nor consider, that not only a Treasury license but an authorization from the Custodian as well is necessary before plaintiff's claim may be paid.

The final document to which plaintiff points is Vesting Order No. 915 of February 15, 1943. The Custodian, by that order, vested in the United States "The excess proceeds of the business and property in the State of New York of The Yokohama Specie Bank, Ltd.," with the explicit proviso that it did not affect the Superintendent's power to continue liquidation. Of course, this vesting order did not authorize the Superintendent to do anything new; it merely reaffirmed his existing power, and that, we have seen, did not include authority to pay plaintiff's claim.

The conclusion which we thus reach—that payment of plaintiff's claim has not been licensed—is compelled, then, not only by the theory and rationale of our earlier decision in this matter, not only by the tenor of the orders and communications of the Treasury Department and of the Custodian, but also by the basic scheme and the ultimate objectives of the program carefully worked out by the Federal Government for the control of enemy alien and other foreign funds. The consistent design of that program is to prevent the fruits of prohibited transactions from being harvested [fol. 537] until the underlying dealings are screened and found to be consonant with the national interests. The entire program, its purpose and its design, would be completely upset and nullified if we were to give to the documents before us the carte blanche licensing effect sought by plaintiff. Such a decision would place in the same category, on a par, all sorts of foreign exchange contracts emanating from blocked nations during the prehostilities period, and it would validate, willy-nilly and in gross, all such transfers, irrespective of how illegal may have been their source, regardless of how illicit may have been their purpose. Manifestly the language of the paper before us cannot be read to produce such a result.

And since payment has not yet been licensed, plaintiff is not entitled either to the principal of the claim or to the accrual of interest thereon. (See, e.g., *Moscow Fire Ins. Co. v. Heckscher & Gottlieb*, 285 N. Y. 674, affg. 260 App. Div. 646, 650; *Donnelly v. City of Brooklyn*, 121 N. Y. 9, 19-20; *McCloskey v. Brown*, 271 App. Div. 772.)

The judgments should be reversed, without costs, and the case remitted to the Trial Term for the entry of judgment in accordance with this opinion.

Loughran, Ch. J., Lewis, Conway, Desmond and Dye, JJ., concur.

[fol. 538] [Stamp:] Compared by ABA. N. Y. County Clerk's Office

COURT OF APPEALS

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 14th day of April in the year of our Lord one thousand nine hundred and forty-nine, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Chief Judge, Presiding. John Ludden, Clerk.

REMITTITUR—April 15, 1949

EUGENE T. SINGER, Respondent-Appellant,

against

THE YOKOHAMA SPECIE BANK, LTD., Defendant,

and

ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, etc., Appellant-Respondent

Be it remembered, That on the 3rd day of November in the year of our Lord one thousand nine hundred and forty-eight, Elliott V. Bell, as Superintendent of Banks of the State of New York, etc., the appellant-respondent in this cause, came here unto the Court of Appeals, by Edward Feldman, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the [fol. 539] Appellate Division of the Supreme Court in and for the First Judicial Department. And Eugene T. Singer, the respondent-appellant in said cause, afterwards appeared in said Court of Appeals by Cravath, Swaine & Moore, his attorneys, and also filed a notice of appeal.

[Stamp:] Compared by ABA, N. Y. County Clerk's Office.

Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Edward Feldman, of counsel for the appellant-respondent, and by Mr. Albert R. Connelly, of counsel for the respondent-appellant, and by James L. Morrison, for amicus curiae, and after due deliberation had thereon, did order and adjudge that the judgments herein be and the same hereby are reversed and case remitted to the Trial Court for the entry of judgment in accordance with the opinion herein, without costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgments be reversed, etc., as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, etc.

John Ludden, Clerk of the Court of Appeals of the State of New York.

[fol. 540] [Stamp:] Compared by ABA. N. Y. County Clerk's Office

COURT OF APPEALS, CLERK'S OFFICE

Albany, April 15, 1949.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal.)

[fol. 541] [Stamp] Compared by ABA. N. Y. County Clerk's Office

STATE OF NEW YORK, IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany, on the nineteenth day of July, A. D. 1949.

Present, Hon. John T. Loughran, Chief Judge, Presiding.

EUGENE T. SINGER, Plaintiff-Respondent-Appellant,

vs.

THE YOKOHAMA SPECIE BANK, LTD., Defendant,

and

ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., Defendant-Appellant-Respondent

A motion to amend the remittitur having heretofore been made herein upon the part of the defendant-appellant-respondent and a cross-motion to amend said remittitur upon the part of the plaintiff-respondent-appellant, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motions be and the same hereby are granted to the extent indicated, and, in other respects, denied. Remittitur amended to read:

> The Supreme Court is directed to enter a judgment adjudging that plaintiff-respondent-appellant recover of the defendant-appellant-respondent, Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., the sum of $557,561.25, without interest, which sum shall constitute a preferred claim payable out of the assets of the Yokohama Specie Bank Ltd., in the possession of the defendant-appellant-respondent, Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., the payment of which, however, is subject to the provisions of Exec-

utive Order No. 8389, as amended, and the rules and regulations issued pursuant thereto.

A federal question was presented and necessarily passed upon by this court, viz: it was held that the provisions of Executive Order No. 8389, as amended, and the rules and regulations issued pursuant thereto did not prevent the accrual or creation of the claim sued upon or render such claim void, but merely prevented the payment of the claim until an appropriate federal license is obtained, and that the documents in evidence do not constitute such license.

And, the Supreme Court, County of New York, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

Raymond J. Cannon, Deputy Clerk. (Seal.)

A Copy

Date: Oct. 21, 1949.

I hereby certify that the foregoing paper is a true copy of the original thereof, filed in my office on the 19 day of July, 1949.

Archibald R. Watson, County Clerk and Clerk of the Supreme Court of New York County.

Facsimile signature used pursuant to Chapter 684, Laws of 1947.

No fee for official use.

Court of Appeals

STATE OF NEW YORK

EUGENE T. SINGER,

Plaintiff-Respondent-Appellant,

against

YOKOHAMA SPECIE BANK, LTD.,

Defendant,

and

ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of the Yokohama Specie Bank, Ltd.,

Defendant-Appellant-Respondent.

NOTICE OF MOTION AND AFFIDAVIT IN SUPPORT OF MOTION FOR REARGUMENT

EDWARD FELDMAN,
Attorney for Defendant-Appellant-Respondent,
No. 80 Spring Street,
New York, N. Y.

HENRY L. BAYLES,
DANIEL GERSEN,
Of Counsel.

Notice of Motion.

Court of Appeals

STATE OF NEW YORK

EUGENE T. SINGER,
Plaintiff-Respondent-Appellant,

against

YOKOHAMA SPECIE BANK, LTD.,
Defendant,

and

ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of the Yokohama Specie Bank, Ltd.,
Defendant-Appellant-Respondent.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Edward Feldman, sworn to the 7th day of July 1949, and upon all of the papers upon which the appeal in the above entitled action was heard and decided by this Court, to wit: the case on appeal and the briefs of the parties and of the United States as *amicus curiae* and upon the remittitur of this Court filed with the Clerk of the County of New York on the 25th day of May 1949, by which it appears that this Court reversed the judgment of the Appellate Division, First Department, from which the appeal was taken and directed the entry of judgment in accordance with the opinion of this Court rendered the 14th day of April 1949, and on the opinion of this Court afore-

said and on all the proceedings heretofore had herein, the undersigned will move this Court at a term thereof, to be held at the Court of Appeals, Court of Appeals Hall, Pine & Eagle Streets, Albany, New York, on the 19th day of July 1949, at the opening of court on that day or as soon thereafter as counsel can be heard for an order directing the return to this Court of the aforesaid remittitur of this Court and thereupon granting reargument of said appeal, and upon such reargument dismissing the complaint upon the authority of *Propper* v. *Clark,* decided June 20, 1949, subsequent to the decision of this Court, by the Supreme Court of the United States, and for such other, further and different relief as to this Court may seem just and proper.

Dated, New York, N. Y., July 7, 1949.

Yours, etc.,

EDWARD FELDMAN,
Attorney for the Defendant,
Elliott V. Bell, Superintendent of Banks of the State of New York as Liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,
Office and P. O. Address,
80 Spring Street,
New York 12, N. Y.

Notice of Motion.

To:

CLERK OF THE COURT OF APPEALS,
Albany, New York.

CRAVATH, SWAINE & MOORE, Esqs.,
Attorneys for Plaintiff-Respondent-Appellant,
Office and P. O. Address,
15 Broad Street,
New York, N. Y.

Affidavit of Edward Feldman.

COURT OF APPEALS

STATE OF NEW YORK

EUGENE T. SINGER,

Plaintiff-Respondent-Appellant,

against

YOKOHAMA SPECIE BANK, LTD.,

Defendant,

and

ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of the Yokohama Specie Bank, Ltd.,

Defendant-Appellant-Respondent.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

EDWARD FELDMAN, being duly sworn, deposes and says:

I am attorney for the defendant Elliott V. Bell, Superintendent of Banks of the State of New York and am familiar with all prior proceedings had herein.

This affidavit is submitted in support of a motion for reargument of the appeal herein. The motion is based upon a decision rendered by the Supreme Court of the United States in the case of

Propper v. *Clark* which accords to the Federal freezing Order and regulations a construction contrary to that accorded to them by this Court.

Throughout this litigation the Superintendent has contended that the provisions of Executive Order No. 8389 prevented the establishment of plaintiff's claim, and constituted a complete defense to his action. This contention, which was supported by the United States as *amicus curiae*, can be broken down into three parts:

(a) that plaintiff's claim rests upon a transaction which was prohibited by the provisions of Executive Order No. 8389, as amended, and the rules and regulations issued pursuant thereto;

(b) that such Order, rules and regulations prevent the accrual or creation of an obligation predicated upon a prohibited transaction and render such transaction null and void until licensed;

(c) that no license validating the transaction upon which plaintiff's claim is based has ever been issued by the Federal authorities.

This Court, in the decisions rendered by it, sustained the first and third of the foregoing contentions, and held that plaintiff's claim rests upon a transaction prohibited by the Executive Order, and that no license has been issued by the Federal authorities authorizing the payment of such claim.

The Court, however, rejected the second of these contentions, and held in substance that the only effect of the Executive Order was to prevent a payment in consummation of a prohibited transac-

tion. It will be recalled that Standard in Yokohama held credits for Standard in New York, and attempted to transfer such credits to the latter by cable transfer through the medium of the Yokohama Specie Bank, Ltd. In its decision this Court in effect held that as a result of the cable transfer title to such credits passed to Standard in New York, but that the Superintendent as statutory receiver could not be required to make payment thereof until an appropriate Federal license was obtained.

The decision of this Court was handed down on April 14, 1949.* At the time the decision was rendered there had been a number of decisions rendered by the lower Federal Courts which in terms disapproved of the holding of this Court on the first appeal. Among such decisions was the decision of the Court of Appeals for the Second Circuit in *Clark* v. *Propper*, 169 F. 2d 324. These decisions, of course, were not binding upon this Court. However, subsequent to the decision of this Court, the Supreme Court of the United States affirmed *Clark* v. *Propper* (.. .... U. S. ....., decided June 20, 1949). The opinion in that case has not yet been officially reported but a copy thereof as printed in "The United States Law Week" is annexed hereto as Exhibit "A".

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* The remittitur was filed in the Office of the Clerk of the County of New York on May 25, 1949. No order or judgment has as yet been entered upon it. On May 25, 1949, the Superintendent moved this Court for an order amending its remittitur so as to state the Federal questions presented by the appeal. No action has as yet been taken by this Court upon that motion and if the present application for reargument is granted the motion to amend the remittitur may become moot.

In that case the New York Supreme Court, subsequent to the extension of freezing controls to transactions involving Austrian nationals, had appointed the petitioner receiver of the New York assets of an Austrian corporation. The statute under which the Court acted provided that title to such property should pass to the receiver upon his appointment. The question presented was whether the Executive Order prevented the transfer to the receiver of an interest in the frozen property. The Court held that in the absence of a license the receiver acquired no interest whatsoever in such property.

It will be noted that the Court's treatment of the Executive Order is composed of two parts. The Court first held that the transaction before it involved a "transfer of credit" between "banking institutions" within the meaning of these terms as used in the Executive Order, and was therefore embraced within the prohibitions of the Order. After making this holding, the Court then turned to an examination of the effect of the Executive Order upon prohibited transactions. The receiver, basing his contentions upon the decisions of this Court in *Singer* v. *Yokohama Specie Bank* and *Leeds* v. *Guaranty Trust Company*, 297 N. Y. 1019, had argued that the purpose of the Executive Order would be served by a simple inhibition upon unlicensed payments and that litigation concerning frozen property could proceed to judgment without regard to the Executive Order, so long as

> "the result of the litigation, i.e. the judgment • • • is subject to the screening process."

(Reply Br., p. 26)

In commenting upon the receiver's argument, the Court said (p. 25, *infra*):

> "It is the petitioner's contention that a mere freezing order does not prohibit a subsequent judicial order transferring title to blocked assets covered by the previous freezing order. * * * Petitioner's argument is that such a construction would immobilize frozen property until it suits the Custodian's convenience to vest, contrary to the need for protection against transfers of foreign funds. These needs, petitioner says, will be served by the provision against payments to claimants from frozen funds without a license."

In over-ruling these objections, the Supreme Court stated (p. 26, *infra*):

> "The freezing order of June 14, 1941, immobilized the assets covered by its terms so that title to them might not shift from person to person except by license until the Government could determine whether those assets were needed for prosecution of a threatened war or to compensate our citizens or ourselves for the damages done by the governments of the nationals affected."

and (p. 29 *infra*)—

> "We base our determination on the purpose of Congress to prevent shifts in title to blocked assets and the prohibition of the Executive Order against transfers of such a credit as this. The language of the order prohibits more than payment. It prohibits transfers of credit."

On the basis of such holding, the Court in effect abrogated the unequivocal direction of the New York statute, that upon appointment of a receiver title to the New York property of a foreign corporation should vest in him. The Court held that the Order of the Supreme Court appointing the receiver, being unlicensed, was totally ineffective to transfer any interest in the property.

This decision of the Supreme Court is in every way determinative of the appeal in the instant case. In this case, there can be no question but that the transaction was embraced within the prohibitions of the Executive Order. The provisions of Section 5(b) of the Trading with the Enemy Act and of Executive Order No. 8389, were unmistakably aimed at giving control over the transmission of moneys by means of cable transfers of credit between banking institutions. No clearer example of a "transfer of credit" between a "banking institution within the United States" and a "banking institution outside the United States" could be postulated than that here involved.* Cf. *Legniti v. Mechanics & Metals National Bank*, 230 N. Y. 415 at 419, *Singer v. Yokohama Specie Bank, Ltd.*, 293 N. Y. 542 at 549. In addition to involving a

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* Not only were the Yokohama branch of the Yokohama Specie Bank and the New York Agency of that bank "banking institutions" within the meaning of Section 5(F) of the Executive Order, but in addition, Standard's Yokohama and New York offices were also "banking institutions" as defined therein, for they were engaged incidentally in the business of purchasing or selling foreign exchange (Rec. fols. 1036-41, 1042-47, 1120-22, 1144-1215, 293-296, 386-388). In addition, each of such offices of Standard "held credits for others" within the meaning of such section of the Order as construed by the Supreme Court in the *Propper* case (Rec. fols. 1048-53, 1061-1065, 1219-1233, 1254, 1315-1329, 1493-1503, 362-3, 372, 409, 414, 428-30, 503, 507-508, 652).

transfer of credit the instant case also plainly involved a "transaction in foreign exchange" and a "payment" by and to a banking institution within the United States within the purview of the Order. Finally, the transaction of August 29, 1941, involved the creation of an interest in blocked property. See General Ruling 12, pars. 1, 2, 5 (a). All of these points were elaborately argued by the Superintendent upon the appeal herein (See Brief, pp. 15-18, Reply Brief, pp. 3-23) and this Court unequivocally held that the transaction of August 29, 1941, fell within the ambit of the Executive Order (299 N. Y. 113, 118, 121, 123, 124, 125; also 299 N. Y. 139, 144, 145).

The second branch of the decision of the United States Supreme Court, *i. e.*, that the Executive Order so completely immobilized frozen credits and property as to prevent the transfer of any interest therein, is likewise determinative of the present appeal. In describing the issue before it, the Supreme Court said (p. 36, *infra*):

> "We are dealing with a situation * * * closely resembling determinations of rights to participate in *res* in the hands of state courts."

This is precisely analogous to the situation presented in the present appeal. This Court is asked to determine the right of *Singer* to participate in the asets in the possession of the Superintendent of Banks.

The argument that prohibited transactions may be treated as valid and enforcible insofar as judicial proceedings are concerned and that the only effect of the Executive Order is to prevent consummation of prohibited transactions by payment,

has been definitively rejected. In the course of its opinion, the Supreme Court referred specifically to the decisions of this Court in the instant case and in effect over-ruled them, stating that the "final authority" to declare the meaning of federal legislation was vested in it rather than in the state court (see *infra*, p. 27).

In view of the foregoing, it is respectfully submitted that the decision of the Supreme Court of the United States upon the Federal questions here involved should be followed by this Court and that the plaintiff's complaint in this action should be dismissed.

The queston presented on this motion for reargument is of major importance in the current liquidation proceedings. The amount involved in this and other cases presenting the same question, including the companion *Banque Mellie* appeal, exceeds $1,800,000. Transactions similar to the one here involved, aggregating several times this amount, took place in 1940 and 1941. But except for the claims now in litigation the beneficiaries accepted the Treasury decisions denying their license applications, and failed to commence actions to enforce their claims within the statutory period.

At first blush, it might seem that this application for reargument is unnecessary since it would appear, superficially, at least that the holding of this Court that payment cannot be made except upon procurement of an appropriate Federal license is very nearly the equivalent of a judgment in favor of the Superintendent. However, the ruling of this Court expressly declares that plaintiff had an "accrued" and "established" claim,

which was entitled to recognition under the Banking Law. While it is true that the Superintendent could not be required to pay this claim until a license had been obtained, it is equally true that the Superintendent could not act in disregard of this determination.

In the light of this ruling a number of questions will inevitably be presented should the Federal authorities, upon renewed application to them, refuse to license plaintiff's claim. Since the inception of this litigation, the Superintendent has maintained a reserve against the possibility that he might eventually be required to make payment of the plaintiff's claim. In the event that a license of that claim is again denied, he will be uncertain whether or not the amount represented by that reserve may be paid over to the Custodian. That uncertainty would spring from several sources. The freezing regulations contemplate the possibility of a renewed application for a license following a denial. Must the Superintendent then hold the reserve in perpetuity because of the possibility that a second or tenth or fiftieth application by the applicant might result in the granting of a license?

Moreover, the existing vesting order of the Custodian vests only the assets remaining "after the payment of the claims of the creditors accepted or established in accordance with the Banking Law of the State of New York." In view of this Court's description of plaintiff's claim as "established" despite the absence of a license, will the Superintendent be free, even though a license has again been denied, to turn over to the Custodian

as part of the surplus assets in his possession the amount of the reserve heretofore maintained to meet the plaintiff's claim, or must he await some further direction from the Custodian? And if such a further direction is issued, will not the Superintendent be placed in a dilemma in that he may be required by the terms of the Trading with the Enemy Act to comply with it (*Central Union Trust Co.* v. *Garvan*, 254 U. S. 554; *In re Yokohama Specie Bank*, 188 Misc. 137), and yet be in doubt as to whether such compliance is permitted by the decision of this Court? The resolution of these questions might well entail further litigation in a matter which has already been protractedly litigated.

These questions will be avoided, and further litigation rendered unnecessary, if this Court will grant the present motion for reargument and modify its decision in accordance with the decision of the United States Supreme Court in the *Propper* case. Under the principles established by that decision it is clear that plaintiff has no enforcible claim whatsoever against this Liquidation. Accordingly, we request that the Court enter a decision directing that the complaint be dismissed. When the complaint is dismissed the Superintendent will be free to release the reserves above referred to, and to transfer such reserves as part of the surplus assets of the Agency to the Custodian where they will be available for distribution to those general creditors of Yokohama Specie Bank, Ltd., entitled thereto under the provisions of the Trading with the Enemy Act.

For the foregoing reasons it is respectfully requested that the motion for reargument be granted

and that upon reargument judgment be rendered dismissing the complaint.

EDWARD FELDMAN.

Sworn to before me this
7th day of July, 1949.

RICHARD J. LARGE,
Notary Public, State of New York.
Appointed for Westchester County,
State No. 2258500.
Certificate Filed in N. Y. County.
Commission Expires March 30, 1951.

Exhibit "A".

No. 390.—October Term, 1948.

Henry M. Propper, as Receiver of the Property and Assets Within the State of New York of A. K. M., Petitioner,

v.

Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June 20, 1949.]

Mr. Justice Reed delivered the opinion of the Court.

The Alien Property Custodian[1] on April 22, 1946, began this action under § 17 of the Trading with the Enemy Act in the United States District Court for the Southern District of New York to obtain the payment, and a declaration of title in him as against the petitioner as receiver, of certain royalties owed by the American Society of Composers, Authors and Publishers (ASCAP) to Staatlich Genehmigte Gesselschaft der Autoren, Komponisten und Musikverleger (AKM), an Austrian association, pursuant to the provisions of vesting order No. 2097, Office of Alien Property Custodian, September 4, 1943, 8 F. R. 16463, whereby the Custodian had vested

[1] Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, was duly substituted for the latter.

in himself title to certain property of AKM, specifically claims for royalties under copyrights for the performance of musical compositions. By contract ASCAP had been authorized by AKM to license on royalty the use in this country of musical copyrights belonging to AKM. ASCAP and the petitioner, who is the state-appointed receiver of the royalties involved, were made defendants. The District Court, on motions for summary judgment or judgment on the pleadings, entered a judgment declaring that the petitioner had no right, title or interest in the claim in question, *Markham* v. *Taylor*, 40 F. Supp. 202, and later, a second judgment directing ASCAP to pay the debt to the Custodian. The United States Court of Appeals for the Second Circuit, on appeal by the petitioner,[2] affirmed. *Clark* v. *Propper*, 169 F. 2d 324.

The pertinent facts underlying this controversy are as follows: On June 12, 1941, on an *ex parte* application by a creditor of AKM, the New York Supreme Court appointed petitioner temporary receiver of that association, pursuant to § 977-b of the New York Civil Practice Act, which provides for the liquidation of the local assets of a foreign corporation when it has ceased to do business for one reason or another not here important. Proceedings under this Act are to enable claimants against the foreign corporation to secure payment of their claims by an equitable apportionment of the available as-

[2] ASCAP, having stipulated to the entry of a judgment against it, did not appeal. It filed a motion here to be made a party. It was permitted to argue and there is now no occasion to grant the motion. It is denied.

sets. The order of appointment directed him "to take, receive, and reduce to his possession any and all assets . . . tangible and intangible, within the State of New York of the defendant [AKM], and hold the same until the further order of this Court." On June 14, 1941, pursuant to § 5 (b) of the Trading with the Enemy Act of 1917, 40 Stat. 411, 415, as amended,[3] the President promulgated Executive Order No. 8785,[4] a so-called freezing order, which prohibited certain transactions involving Austrian property except as they were specifically licensed by the Secretary of the Treasury. On July 29, 1941, petitioner, as receiver, began an action in the courts of New York against ASCAP to recover the royalties which it owed AKM.[5] Its disposition is awaiting the outcome of this case. On September 29, 1941, petitioner, upon the default of AKM, was appointed permanent receiver of that association's assets. Thereafter followed the vesting order, September 4, 1943, and this suit, April 22, 1946.

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[3] By the Joint Resolution of May 7, 1940, 54 Stat. 179.

[4] 6 F. R. 2897.

[5] For opinions of the New York courts relating to the petitioner's action against ASCAP, see *Propper* v. *Buck*, N. Y. Law Journal, October 29, 1941, p. 1268, col. 5; *Propper* v. *Buck*, 32 N. Y. S. 2d 103 (1st Dept.); *Propper* v. *Buck*, 178 Misc. 76, 33 N. Y. S. 2d 11 (Sup. Ct. N. Y. Co.), affirmed, 263 App. Div. 948, 34 N. Y. S. 2d 134; *Propper* v. *Taylor*, 186 Misc. 70, 58 N. Y. S. 2d 829 (Sup. Ct. N. Y. Co.), affirmed, 270 App. Div. 890, 62 N. Y. S. 2d 602 (1st Dept.); *Propper* v. *Taylor*, 186 Misc. 72, 58 N. Y. S. 2d 831 (Sup. Ct. N. Y. Co.), modified, 270 App. Div. 890, 62 N. Y. S. 2d 601 (1st Dept.).

Exhibit "A".

Upon the limited grant of the petition for certiorari, 335 U. S. 902, the issues argued to this Court and now to be decided are whether the appointment of petitioner as temporary receiver on June 12, 1941, or his appointment as permanent receiver on September 29, 1941, by relation back, passed title to him of the claim for royalties as of June 12, 1941. Furthermore, since, as will subsequently appear, we conclude these issues against petitioner, we must consider whether the freezing order barred a subsequent unlicensed judicial transfer by the order appointing the petitioner permanent receiver.[6]

First. The appointment as permanent receiver on September 29, 1941, concededly would have vested in petitioner as permanent receiver all right, title and interest of AKM in its claim against ASCAP if the freezing order of June 14, 1941, had not intervened after petitioner's appointment as temporary receiver on June 12, 1941. Accepting that position, the question of whether the appointment as permanent receiver related back to the date of the temporary receivership, so as to place title to the claim in the permanent receiver as of June 12, 1941, and the question as to whether the appointment as permanent receiver itself vested title in the petitioner, notwithstanding the prior freezing order, depend alike upon a determination as to whether

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[6] This latter issue was brought forward by the petition for certiorari, Question Presented No. 3, and before argument its discussion by brief and at the bar was formally requested by this Court, although no order to that effect was entered.

the freezing order made invalid any subsequent transfer of title by judicial action.

The vesting order here in question, Vesting Order No. 2097, was executed on September 4, 1943, a date subsequent to the appointment of petitioner as permanent receiver. So far as the parties to this litigation are concerned, by its specific terms it vested in the Custodian title to the property of AKM only.[7] Nothing presented in this case calls our attention to any effort made by the Custodian to vest in himself any title to the claim that might be in the permanent receiver for the benefit of creditors and ultimately for AKM or those entitled to its assets on distribution,[8] nor do we adjudicate his right to do so.

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[7] See Trading with the Enemy Act, 50 U. S. C. App. §§ 7(c) and 616:

"§ 616. . . . . and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; . . . "

See *Clark* v. *Uebersee Finanz-Korp.*, 332 U. S. 480.

[8] Compare *Great Northern R. Co.* v. *Sutherland*, 273 U. S. 182, where the Custodian vested in himself by order on a corporation the shares of stock appearing on the corporation's books in the name of an alien enemy.

It may be that all property subject to blocking may not be subject to vesting. Trading with the Enemy Act, as amended by First War Powers Act, 55 Stat. 838, 839, Title III(1)(B). Compare Bishop, Judicial Construction of the Trading with the Enemy Act, 62 Harv. L. Rev. 721, 723.

The order, so far as is pertinent, vested in the Custodian "All . . . claim [of AKM to] all right to receive monies . . . by way of royalty, share of profits or other emolument," together with "all causes of action . . . with respect to" the aforesaid copyrights. This claim was a debt of ASCAP to AKM, property of AKM, as defined in the regulations of April 10, 1940, 5 F. R. 1401(c), and June 14, 1941, 6 F. R. 2905. The latter citation refers to the regulation defining property, under the Trading with the Enemy Act, effective at the time of the vesting order.[9]

Prior to petitioner's appointment as permanent receiver and the later vesting order, the President, on June 14, 1941, had prescribed by Executive Order No. 8785, 6 F. R. 2897, that certain transactions by or on behalf of Austrian associations such as AKM were prohibited unless licensed. No license for the judicial order appointing petitioner as permanent receiver was asked for or obtained.

Order No. 8785 was issued pursuant to the authority granted the President by § 5(b) of the Act of October 6, 1917, as amended, particularly by the Joint Resolution of May 7, 1940.[10] The order forbade, § 1 (A), "All transfers of credit between any banking institutions within the

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[9] 55 Stat. 838, 840, 50 U. S. C. App. § 617.

[10] 54 Stat. 179:

"During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President, . . ."

United States; . . ." Authority during war or any other period of national emergency to prohibit such transfers was given the President by the Joint Resolution. Order No. 8785 declared "the existence of a period of unlimited national emergency."

The same resolution authorized the President to issue rules and regulations and specifically to define "banking institutions." The President had on April 10, 1940, issued a similar order prohibiting similar transfers applicable to nationals of Norway and Denmark to guard against such transfers brought about by the German invasion of those countries. Executive Order No. 8389, 5 F. R. 1400. It contained to all intents and purposes the same definition of "banking institutions." See § 11 C thereof. The order and regulations thereunder and therefore the definition were approved by the Joint Resolution.[11] The definition applicable to transactions of this Austrian national, AKM, under the freezing order of June 14, 1941, is set out below.[12] We accept this definition as authorized by the Resolution.

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[11] 54 Stat. 179:

"Sec. 2. Executive Order Numbered 8389 of April 10, 1940, and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed."

[12] 6 F. R. 2898, § 5:

"F. The term 'banking institution' as used in this Order shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or brokers; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate 'banking institution.'"

Exhibit "A".

By the order appointing a permanent receiver the claim of AKM against ASCAP was directed to be transferred from AKM to the petitioner. From ASCAP's point of view it was a debt; from AKM's a claim. The shift of obligation contemplated by the order for a permanent receiver was a transaction that involved "property in which" there was an "interest of any nature whatsoever, direct or indirect" in aliens of designated countries, including Austria.[13] But the Executive Order of June 14, 1941, did not prohibit all transactions without license involving Austrian-owned property. It specified the prohibited transactions, however, by categories so all-inclusive as to make it clear the purpose was to require transactions involving property of nationals of designated foreign countries to be carried out under regulations of this Government except certain transactions such as are provided for in General Ruling No. 12, April 21, 1942, 7 F. R. 2991. The Executive Order forbids transfers of credit. As "credit" is not defined by the Order or regulation, we, in considering credits as property subject to vesting under the Trading with the Enemy Act, give it its ordinary meaning of the obligation due on accounting between parties to transactions. This credit, owed by ASCAP to AKM, was in effect directed to be transferred by the permanent receiver order from AKM to the petitioner as receiver. There is, we think, no doubt that a voluntary transfer by a bank of a credit in the transferring bank from the account of a known Austrian to the account of another

[13] Executive Order No. 8785, *supra*.

banking institution would violate Executive Order No. 8785 as a transfer of credit between banking institutions.

It remains, then, to determine whether ASCAP and petitioner are banking institutions of such a character as to be subject to the prohibition of Executive Order No. 8785, § 1 A against "transfers of credit between any banking institutions." A reading of the President's definition, note 12 *supra*, shows that they do fall within the words "any person holding credits for others as a direct or incidental part of his business . . . ." It is true that to make ASCAP or the petitioner a banking institution by definition is a departure from the ordinary conception of the meaning of "banking institution." Petitioner says to so construe the definition is "utter fantasy." The definition, however, as we have pointed out, has had congressional ratification. Furthermore, the obvious intention of Congress to allow flexibility to the term "banking institution" by leaving its definition to the President sheds light on its purpose. The phrase "banking institution" used and defined in the Bank Holiday Proclamation of March 6, 1933, 48 Stat. 1689, 1690, was adopted by the Emergency Banking Relief Act of March 9, 1933, 48 Stat. 1, with a delegation to the President of the power of definition. Evidently the delegation was to permit him to bring atypical forms of financial institutions within the reach of the emergency act. The Act of March 9 was grafted on to the Trading with the Enemy Act of 1917 and when that Act was again extended to meet the foreign assets problem the President's wide power to define banking institution was a ready instrument to cope with the

myriad circumstances arising in the control of shifts of foreign assets. The power in peace and in war must be given generous scope to accomplish its purpose. Through the Trading with the Enemy Act, in its various forms, the nation sought to deprive enemies, actual or potential, of the opportunity to secure advantages to themselves or to perpetrate wrongs against the United States or its citizens through the use of assets that happened to be in this country.[14] To do so has necessitated some inconvenience to our citizens and others who, as here, are not involved in any actions adverse to the nation's interest. That fact, however, cannot lead us to narrow the broad coverage of the Executive Order. Our prior decisions have made that clear.[15] ASCAP and petitioner, the receiver, each hold credits for others as an "incidental part of [their] business," and are therefore "banking institutions." ASCAP held a credit for AKM and after the permanent receivership order held that credit for the receiver who in turn would hold it for AKM's creditors and AKM.

We hold that the transfer of this credit from a liability owed by ASCAP to AKM, to a liability owed by ASCAP to the receiver, violates the prohibition against transfers of credit.

We turn now to an examination of the effect of the federal Executive Order No. 8785 of June 14,

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[14] See United States Treasury Department, *Administration of the Wartime Financial & Property Controls of the United States Government* (1942), pp. 1-4.

[15] *Central Trust Co.* v. *Garvan*, 254 U. S. 554; *United States* v. *Chemical Foundation*, 272 U. S. 1; *Great Northern R. Co.* v. *Sutherland*, 273 U. S. 182; *Markham* v. *Allen*, 326 U. S. 490; *Clark* v. *Uebersee Finanz-Korp.*, 332 U. S. 480.

1941, the so-called "freezing order" on the subsequent state court order of September 29, 1941, appointing the petitioner permanent receiver. That examination is to be made with recognition of the fact that at the time of the state order, title to the AKM claim against ASCAP had not been vested in the Custodian. That development did not take place until the vesting order of September 4, 1943.

It is petitioner's contention that a mere freezing order does not prohibit a subsequent judicial order transferring title to blocked assets covered by the previous freezing order. We will deal subsequently in this opinion with the question of whether the title to the claim passed to the temporary receiver, under New York law, on his appointment. At this point, we assume this did not happen and examine only the question of the effect of a freezing order on the subsequent judicial order. Petitioner's argument is that such a construction would immobilize frozen property until it suits the Custodian's convenience to vest, contrary to the need for protection against transfers of foreign funds. These needs, petitioner says, will be served by the provision against payments to claimants from frozen funds without a license. E. O. 8785, § 1 (B).[16] He further argues

[16] There is a suggestion that Congress could not, because of the Tenth Amendment, constitutionally abrogate the power of New York through its courts, in peacetime, to deal with the local assets of defunct foreign corporations. The chief reliance is placed upon *Clark* v. *Williard*, 294 U. S. 211, a case that held that as between states, the state of the location of corporate assets had control of their distribution in liquidation. It cannot be seriously doubted that the danger of war was sufficiently grave at the time of the freezing order, June 14, 1941, to justify the President's action respecting Austrian property. Cf. *Silesian-American Corp.* v. *Clark*, 332 U. S. 469, 474-477.

that by the Joint Resolution Congress did not empower the President to deprive New York of all power to deal with the ASCAP debt in a proceeding under Civil Practice Act § 977-b, covering actions of receivers to liquidate local assets of defunct foreign corporations.

It is true that state litigation between local claimants and foreign owners or those in possession of blocked or frozen assets could proceed to a determination of rights between the claimant and the foreign national without the blocked property passing into hands that might use it to the detriment of the welfare of this nation, so long as payment could not be made without a license. Nothing in the Trading with the Enemy Act or regulations specifically forbids *eo nomine* litigation in state courts. The plan for prohibition of unlicensed transactions by foreign nationals comprehends blocking of transfers of credits and vesting of local assets of such nationals under the Trading with the Enemy Act and regulations thereunder. If transactions are blocked, vesting may or may not follow. When the Custodian vests blocked property, title passes to the Custodian and his authority to vest and hold cannot be questioned except as provided in the Trading with the Enemy Act.[17] The freezing order of June 14, 1941, immobilized the assets covered by its terms so that title to them might not shift from

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[17] 50 U. S. C. App. §§ 7 (c), 9 (a). Cf. *Clark* v. *Uebersee Finanz-Korp.*, 332 U. S. 480, 487; *Central Trust Co.* v. *Garvan*, 254 U. S. 554, 567-68; *Great Northern R. Co.* v. *Sutherland*, 273 U. S. 182, 194; *Becker Co.* v. *Cummings*, 296 U. S. 74, 79; *Josephberg* v. *Markham*, 152 F. 2d 644, 649.

person to person except by license until the Government could determine whether those assets were needed for prosecution of the threatened war or to compensate our citizens or ourselves for the damages done by the governments of the nationals affected. *United States* v. *Chemical Foundation,* 272 U. S. 1, 11; *Silesian-American Corp.* v. *Clark,* 332 U. S. 469, 476.

We assume that the Court of Appeals of New York held in *Singer* v. *Yokohama Specie Bank* that title to blocked assets could pass without license from a statutory receiver to a creditor.[18]. As the Trading with the Enemy Act is federal legislation founded on federal constitutional provisions, however, the United States has authority to make all laws necessary and proper for carrying the power into execution. The power to enact carries with it final authority to declare the meaning of the legislation. *Prudence Corp.* v. *Geist,* 316 U. S. 89, 95. Federal courts have so held as to this issue in this case, 169 F. 2d 324, 327, and in *Bernstein* v. *N. V. Nederlandsche-Amerikaansche etc.,* 173 F. 2d 71, 73. The Trading with the Enemy Act is national in range. The effect of a federal freezing order should be the

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[18] 293 N. Y. 542, 550:

"The fact that Federal regulations governing transactions in foreign exchange prevent the payment to Standard until a license under Executive Order No. 8389, as amended, is procured does not make conditional the obligation of the New York Agency to pay. (See United States Treasury Department, General Ruling No. 12(4) under Executive Order No. 8389 as amended; also *Feuchtwanger* v. *Central Hanover Bank,* 288 N. Y. 342.)"

Cf. *id.,* 121 N. Y. L. J., No. 95, May 16, 1949, p. 1735. Compare *Polish Relief Comm'n* v. *Banca N. A. Rumaniei.* 288 N. Y. 332.

same on subsequent transfers of title in all states. State law determines the effect of the appointment of a receiver on title to the property administered, but federal law determines whether the event of appointment can free the property from the prior control. Cf. *Lyeth* v. *Hoey*, 305 U. S. 188, 191, *et seq.*

Petitioner contends also that the administrative interpretation of the Executive Order of June 14, 1941, has been to permit litigation as to rights in the frozen assets. That is borne out by General Ruling No. 12 of April 21, 1942, 7 F. R. 2991, promulgated after petitioner had begun suit against ASCAP and referring to Executive Order No. 8389, as amended June 14, 1941. The applicable section is set out in the margin.[19] It is to be observed, however, that the proviso of § d limits the rights a litigant may obtain to such right as the owner of blocked property could confer by voluntary act. General Ruling No. 12, as it came after the suit by the receiver against ASCAP was started and after the order appointing peti-

[19] "(d) Any transfer affected by the Order and/or this general ruling and involved in, or arising out of, any action or proceeding in any Court within the United States shall, so far as affected by the Order and/or this general ruling, be valid and enforceable for the purpose of determining for the parties to the action or proceeding the rights and liabilities therein litigated; *Provided, however,* That no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license."

See also Public Circular No. 31, August 2, 1946, 11 F. R. 8351.

tioner as permanent receiver, is not treated by us as decisive in this case. It is useful only as a statement of the administrative determination as to the effect of litigation without a license.

It is our conclusion that the Joint Resolution of May 7, 1940, and the Executive Order of April 10, 1940, put into effect a valid plan for control of the property covered by the regulation that prohibited any change of title to that property by reason of the subsequent appointment of petitioner as permanent receiver. We do not now undertake to say whether every determination of rights concerning blocked property in unlicensed litigation is voidable. We base our determination on the purpose of Congress to prevent shifts in title to blocked assets and the prohibition of the Executive Order against transfers of such a credit as this. The language of the order prohibits more than payment. It prohibits transfers of credit. We do not think the administrative rulings are to the contrary.

Second. The petitioner advances the contention however, that title to AKM's claim against ASCAP had passed to him by his appointment as temporary receiver on June 12, 1941, prior to the freezing or blocking order of June 14, 1941. Therefore, petitioner argues, AKM had nothing that could be frozen by the immobilization order or taken by the vesting order.

The precise issue of state law involved, *i. e.*, whether the temporary receiver under § 977-b of the New York Civil Practice Act is vested with title by virtue of his appointment, is one which has not been decided by the New York courts. Both the District Court and the Court of Ap-

peals faced this question and answered it in the negative. In dealing with issues of state law that enter into judgments of federal courts, we are hesitant to overrule decisions by federal courts skilled in the law of particular states unless their conclusions are shown to be unreasonable. *Estate of Spiegel* v. *Commissioner*, 335 U. S. 701, 707-708; *Helvering* v. *Stuart*, 317 U. S. 154; *MacGregor* v. *State Mutual Co.*, 315 U. S. 280. We shall examine the problem from that point of view.

Having no state case on the precise statute before it, the Court of Appeals turned to cases dealing with temporary receiverships in equity proceedings and under analogous statutes. These cases seem to hold that neither temporary receivers of the equity[20] nor statutory[21] class obtain title, but, on the contrary, merely a right to possession. The courts below found nothing in § 977-b which evidenced an intent that the result

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[20] *E. g., Decker* v. *Gardner*, 124 N. Y. 334; see *Keeney* v. *Home Insurance Co.*, 71 N. Y. 396, 401.

[21] *E. g., Mutual Brewing Co.* v. *N. Y. & C. P. F. Co.*, 16 App. Div. 149; *Metropolitan Life Ins. Co.* v. *Sanborn*, 69 N. Y. Supp. 1009; see N. Y. General Corporation Law §§ 162, 163, 168, and annotations thereto. Petitioner calls our attention to *Nealis* v. *American Tube & Iron Co.*, 150 N. Y. 42, 45, a case not cited to the Court of Appeals. This case says that a temporary receiver under a different statute "is vested with title and represents the corporation and its creditors as fully as a permanent receiver after final judgment of dissolution." P. 45. This case, however, involved the right of a temporary receiver to sue and the opinion deals with that problem rather than the distinction between a right to obtain possession and title. See *In re Warren E. Smith Co.*, 52 N. Y. Supp. 877, 884.

under that section should be otherwise. Admittedly there is no express declaration of such an intent.

The statutory language is easily susceptible to varying interpretations. See subsections 4, 10, 11, 12 and 19. These sections are not clear as to the title taken by the temporary receiver or the authority granted to him for the holding or handling of claims against debtors. The Court of Appeals concluded, however, that where in subsection 12 the statute said that "any receiver appointed . . . shall have all the powers and duties . . . possessed by and conferred upon receivers and trustees by the laws of the state of New York," the meaning was "that a temporary receiver under this provision takes the usual powers of other temporary receivers in New York." 169 F. 2d 324, 327. It was pointed out that otherwise the specific and restricted grant of powers to a temporary receiver by subsection 4 would be purposeless.

Petitioner contends here for the first time that a vesting of title in the temporary receiver is an essential prerequisite to the exercise of jurisdiction *in rem* over the assets within the state of a nonresident association which is served by publication. The contention is that an affirmance of the court below on the issue of state law will render proceedings under § 977-b subject to an attack on constitutional grounds under the doctrine of *Pennoyer* v. *Neff*, 95 U. S. 714. In our opinion the argument is without merit. *Pennoyer* v. *Neff* merely holds that a personal judgment cannot be obtained against a nonresident on service by publication. It recognizes at p. 733 that

for an *in rem* action it is sufficient that the property be within the state, subject to the control of the Court, and that there be some form of service which is reasonably calculated to give notice to parties whose interests may be affected by the judgment. Cf. *Milliken* v. *Meyer*, 311 U. S. 457, 463. The first requirement can be met in other ways than seizure of title, *e. g.*, by an injunction against transfer of the property, *Pennington* v. *Fourth National Bank*, 243 U. S. 269; by an attachment, *Herbert* v. *Bicknell*, 233 U. S. 70; or by personal service on the party holding the property within the state, *Security Savings Bank* v. *California*, 263 U. S. 282. We have no doubt that where property is in a state and comes under the control of a court, as here by appointment of the temporary receiver, it is fair to permit substituted service. *Anderson Nat. Bank* v. *Luckett*, 321 U. S. 233, 240, *et seq.*; see *McDonald* v. *Mabee*, 243 U. S. 90.

Since the determination of the state law issue concerning the title of the temporary receiver by the court below is not unreasonable, we accept it as correct for the purposes of this case.

A suggestion appears in petitioner's briefs, but not in the questions presented by the petition for certiorari, that the judgments below should be vacated and the case remanded to the District Court to be held until the parties can secure from the courts of New York a decision as to whether the temporary receiver took title to the claim against ASCAP. Waiving the failure to raise the issue by the petition for certiorari,[22] we consider

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[22] *Connecticut R. & L. Co.* v. *Palmer*, 305 U. S. 493.

the contention in deference to the earnestness with which the point is pressed in the dissent.[23] If the state law is that title passed to the temporary receiver on his appointment prior to the freezing order, the Custodian, by the assumption of the opinion, would obtain nothing by his order vesting AKM property. Such a ruling would make unnecessary consideration of any other issue.

This suggested procedure has been followed in order to avoid a decision on a federal constitutional issue—*Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101; *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168; *Railroad Comm'n* v. *Pullman Co.*, 312 U. S. 496; but cf. *Public Utilities Comm'n* v. *United Fuel Gas Co.*, 317 U. S. 456, 462-63—and where the only issue in the case was one of state law, although federal jurisdiction was based on the Bankruptcy Act. *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478. We have refused in a diversity of citizenship case to allow the difficulty of an issue of state law to deter us from exercising our jurisdiction when federal determination was subject to equitable discretion and the state issue was the only one in the case. *Meredith* v. *Winter Haven*, 320 U. S. 228.[24] To refrain from

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[23] Cf. *West* v. *Rutledge Timber Co.*, 244 U. S. 90, 100.

[24] Where there is no suggestion to hold and send to a state court for the resolution of a state issue, we decide issues of state law. See cases in federal courts under diversity jurisdiction. *Wichita Royalty Co.* v. *City National Bank*, 306 U. S. 103; *West* v. *A. T. & T. Co.*, 311 U. S. 223; *Fidelity Trust Co.* v. *Field*, 311 U. S. 169; *Six Companies* v. *Highway Dist.*, 311 U. S. 180; *Stoner* v. *New York Life Ins. Co.*, 311 U. S. 464; *Palmer* v. *Hoffman*, 318 U. S. 109, 117.

deciding it, we there said, would be to enervate diversity jurisdiction.

Where a case involves a nonconstitutional federal issue, however, the necessity for deciding which depends upon the decision on an underlying issue of state law, the practice in federal courts has been, when necessary, to decide both issues. This was the course we followed in *Markham* v. *Allen*, 326 U. S. 490, 495-6, a case arising under the Trading with the Enemy Act, where an issue was the construction of a state statute. The state law question in *Estate of Spiegel* v. *Commissioner, supra*, was concededly difficult and unsettled; its decision admittedly controlled the existence of a federal question, since a finding that there was no possibility of reverter under Illinois law would have finally determined the issue on which the case was decided. And yet, although a method may have existed for obtaining an adjudication on the issue from the Illinois courts, 335 U. S. 632, 673-4, this Court followed the procedure which we adopt here of depending upon the determination of state law by the Court of Appeals. 335 U. S. 701, 707-8. In so doing it followed the decision in *Helvering* v. *Stuart*, 317 U. S. 154, 161, *et seq.* *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, a common-law case, is itself a precedent against any general ruling that cases properly in the federal courts that depend upon state law should have that issue submitted to state courts for decision. See the later decision in the same case, *Tompkins* v. *Erie R. Co.*, 98 F. 2d 49.

The cases mentioned above where this Court required submission of single issues, excised from

the controversy, to state courts were cases in equity. The discretion of equity as to the terms upon which it would grant its remedies in the light of our rule to avoid an interpretation of the Federal Constitution unless necessary was relied upon to justify a departure from normal procedure. In the *Magnolia* case, we directed that the trustee file plenary proceedings to determine title in a state court litigation necessarily complete in itself. The complaint here in a single count seeks recovery of the debt from ASCAP and determination of the Custodian's title to the claim *vis-a-vis* the receiver. Assuming that quieting title to a chattel is an equitable proceeding and that the District Court can, by cutting out the title issue and by refusing to proceed in the controversy unless obeyed, compel the Custodian by whatever proceedings New York may provide to litigate only the narrow issue of title in the temporary receiver, there would remain the problem of control of the receiver, by threats of contempt action, to keep him from raising in such proceedings federal issues such as the right to secure title as permanent receiver through state judicial action after the freezing or immobilization order. This federal issue we decided above. Furthermore, as the state court could reasonably require complete adjudication of the controversy, the District Court would perhaps be compelled to stay proceedings in the state court to protect its own jurisdiction. 28 U. S. C. § 2283. Otherwise in sending a fragment of the litigation to a state court, the federal court might find itself blocked by *res judicata* with the result that the entire federal controversy would be ousted from the federal courts where it was placed by Congress. See note 17, *supra*.

Exhibit "A".

The submission of special issues is a usful device in judicial administration in such circumstances as existed in the *Magnolia, Spector, Fieldcrest* and *Pullman* cases, *supra,* but in the absence of special circumstances, 320 U. S. at 236, 237, it is not to be used to impede the normal course of action where federal courts have been granted jurisdiction of the controversy.

We reject the suggestion that a decision in this case in the federal courts should be delayed until the courts of New York have settled the issue of state law.

Third. The petitioner makes the further point that the judgment below determining that he had no right, title or interest to the claim of AKM against ASCAP is beyond the competence of the federal district court because that property was in the hands of the state court by virtue of the receivership. Even if title did not pass, he argues, he, and through him the state court, had possession of the claim by virtue of his appointment as temporary receiver before the promulgation of the freezing order. Reliance is placed on the rulings of cases like *Kline* v. *Burke Construction Co.,* 260 U. S. 226, 229, 231; *Princess Lida* v. *Thompson,* 305 U. S. 456, 466; and *Farmers' Loan & Co.* v. *Lake St. R. Co.,* 177 U. S. 51, 61. The rule declared by these cases is that when one court has taken possession and control of a *res,* a second court is disabled from exercising a power over that *res.* The circumstances of this controversy do not present such an interference with state control of a *res.* We are dealing with a situation more closely resembling determinations of rights to participate in *res* in the hands of

state courts.[25] What the state court had, at most, was a claim against a debtor, ASCAP. The judgment enabled the Custodian to collect the debt that ASCAP owed AKM. Although this judgment determined title to AKM's claim against ASCAP when the adverse claimant was a state receiver, those facts did not prevent the federal court from giving a judicial declaration of the right to the claim. The scheme of the Trading with the Enemy Act contemplates that federal courts may provide such determinations. § 17; cf. *Markham* v. *Allen*, 326 U. S. 490, 495. The congressional purpose to put control of foreign assets in the hands of the President through the Custodian, so that there might be a unified national policy in the administration of the Act, argues strongly for federal determination of issues of rights in the blocked assets. Comity does not require abnegation to the extent that a federal court cannot adjudicate rights to the claim involved.

Affirmed.

MR. CHIEF JUSTICE VINSON took no part in the consideration or decision of this case.

MR. JUSTICE JACKSON dissents on the ground that ASCAP is not a banking institution under the definition in Executive Order No. 8785.

MR. JUSTICE FRANKFURTER, dissenting in part.

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[25] See *Markham* v. *Allen*, 326 U. S. 490; *Commonwealth Trust Co.* v. *Bradford*, 297 U. S. 613; *Clark* v. *Tibbetts*, 167 F. 2d 397, 401.

Exhibit "A".

The Court recognizes that central to determining the effect of the Alien Property Custodian's freezing and vesting orders is the effect under New York law of petitioner's appointment as temporary receiver on June 13, 1941. It observes that "The precise issue of state law involved, *i. e.*, whether the temporary receiver under § 977-b of the New York Civil Practice Act is vested with title by virtue of his appointment, is one which has not been decided by the New York courts." And it concedes that the language of the relevant New York statutes "is easily susceptible to varying interpretations." Yet it puts its own interpretation on those statutes though that interpretation may be displaced tomorrow by the only courts which have power to render an authoritative interpretation of New York law —the courts of the State of New York.

In other cases that have come before us in which decision of a federal issue or the necessity for its decision depended on a seriously doubtful question of State law, we have directed that application should first be made to the courts of the State for final disposition of the State question. *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478; *Railroad Comm'n of Texas* v. *Pullman Co.*, 312 U. S. 496; *Chicago* v. *Fieldcrest Dairies, Inc.*, 316 U. S. 168; *Spector Motor Service, Inc.* v. *McLaughlin*, 323 U. S. 101; *A. F. of L.* v. *Watson*, 327 U. S. 582. In each of these cases the discretion of a federal court of equity could practicably be exercised in a way which retained ultimate jurisdiction of the case while permitting adjudication of the State question in the State courts. In each there were available State pro-

cedures capable of providing a prompt decision, and the litigation had not already consumed such an unconscionable amount of time as to make recourse to them inexpedient. Cf. *Public Utilities Comm'n* v. *United Fuel Gas Co.*, 317 U. S. 456. The present case meets all those conditions, see N. Y. Civ. Prac. Act § 473, and should receive the same disposition.

It is true that in all but one of these cases recourse to the State courts also served the purpose of avoiding what might have proved to be unnecessary decision of a constitutional issue. But see *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478. Even more fundamental, however, was recognition of the importance of maintaining harmonious relations between parallel systems of State and federal courts in a situation where, because State law controlled, the State courts had the last word and so a federal court at best could make only an informed guess. That this was a dominant consideration in the mind of the Court appears plainly in the language of its opinions. The following passages are illustrative:

1. "The last word on the meaning of Article 6445 of the Texas Civil Statutes, and therefore the last word on the statutory authority of the Railroad Commission in this case, belongs neither to us nor to the district court but to the supreme court of Texas. In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication. . . . The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus

supplanted by a controlling decision of a state court. . . .

"Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law, *Fenner* v. *Boykin*, 271 U. S. 240; *Spielman Motor Co.* v. *Dodge*, 295 U. S. 89; or the administration of a specialized scheme for liquidating embarassed business enterprises, *Pennsylvania* v. *Williams*, 294 U. S. 176; or the final authority of a state court to interpret doubtful regulatory laws of the state, *Gilchrist* v. *Interborough Co.*, 279 U. S. 159; cf. *Hawks* v. *Hamill*, 288 U. S. 52, 61. These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion,' restrain their authority because of "scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary. See *Cavanaugh* v. *Looney*, 248 U. S. 453, 457; *Di Giovanni* v. *Camden Ins. Assn.*, 296 U. S. 64, 73." *Railroad Comm'n of Texas* v. *Pullman Co.*, 312 U. S. 496, 499-501.

2. "We are of opinion that the procedure which we followed in the *Pullman* case should be followed here. Illinois has the final say as to the meaning of the ordinance in question. It also has the final word on the alleged conflict between the ordinance and the state Act. The determination which the District Court, the Circuit Court of Appeals, or we might make could not be anything more than a forecast—a prediction as to the ultimate decision of the Supreme Court of

Illinois. . . . As we said in the *Pullman* case, 'The resources of equity are equal to an adjustment that will avoid the waste of a tentative decision' and any 'needless friction with state policies.' . . . It is an exercise of a 'sound discretion, which guides the determination of courts of equity.' *Beal* v. *Missouri Pacific R. Co.*, [313 U. S. 45, 50]. In this case, that discretion calls for a remission of the parties to the State courts, which alone can give a definitive answer to the major questions posed. Plainly, they constitute the more appropriate forum for the trial of those issues. See 54 Harv. L. Rev. 1379. Considerations of delay, inconvenience, and cost to the parties, which have been urged upon us, do not call for a different result. For we are here concerned with the much larger issue as to the appropriate relationship between federal and state authorities functioning as a harmonious whole." *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168, 171-73.

3. ". . . if, as the District Court thought, this Florida law is not self-executing, suits seeking to raise the due process question or any other constitutional question would be premature until Florida supplied sanctions for its enforcement. A decision today on the merits might, therefore, amount to no more than an advisory opinion. . . . The resources of equity are not inadequate to deal with the problem so as to avoid unnecessary friction with state policies, while selective cases go forward in the state courts for an orderly and expeditious adjudication of the state law questions." *A. F. of L.* v. *Watson*, 327 U. S. 582, 598-99.

So here, though no constitutional issue is present, regard for the respective orbits of State and federal tribunals is the best of reasons, as a matter of judicial administration, for requiring a definitive adjudication by the New York courts rather than proceeding on the basis of our own tentative guess as to the meaning of the New York statutes. That federal issues may remain is no justification for refusing to submit to the New York courts a separable issue of New York law. We have no occasion to assume that they will go on to decide these federal questions when a federal court has expressly retained jurisdiction to decide them. Cf. *Federal Power Comm'n* v. *Pacific Power & L. Co.*, 307 U. S. 156, 160.

We should remand the case to the District Court with instructions to retain jurisdiction pending submission to the courts of New York by appropriate proceedings of the question whether title to AKM's claim against ASCAP passed to petitioner upon his appointment as temporary receiver.

WALTER SOCOLOW and JOSEPH M. COHEN for petitioner; LOUIS D. FROHLICH (HERBERT T. JACOBY with him on the brief) for Deems Taylor; DAVID SCHWARTZ (PHILIP B. PERLMAN, Solicitor General, DAVID L. BAZELON, Assistant Attorney General, JAMES L. MORRISSON, and JOSEPH LAUFER with him on the brief) for respondent.

[fol. 543] STATE OF NEW YORK, IN COURT OF APPEALS

At a Court of Appeals for the State of New York, Held at Court of Appeals Hall in the City of Albany, on the Sixth Day of October, A. D. 1949

Present: Hon. John T. Loughran, Chief Judge, Presiding.

BANQUE MELLIE IRAN, Plaintiff-Respondent-Appellant,

vs.

THE YOKOHAMA SPECIE BANK, LTD., LEO T. CROWLEY, as Alien Property Custodian, Defendant,

and

ELLIOT V. BELL, as Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of Yokohama Specie Bank Ltd., in the State of New York, Defendant-Appellant-Respondent

EUGENE T. SINGER, Plaintiff-Respondent-Appellant,

vs.

YOKOHAMA SPECIE BANK, LTD., Defendant,

and

ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in the State of New York of the Yokohama Specie Bank, Ltd., Defendant-Appellant-Respondent

Motions for re-argument of the above causes having been heretofore made upon the part of the defendant-appellant-respondent herein and papers having been duly submitted thereon and due deliberation thereupon had, it is

Ordered, that the said motions be and the same hereby are denied with ten dollars costs and necessary printing disbursements.

A copy.

Raymond J. Cannon, Deputy Clerk. (Seal.)

[fol. 544] SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK

Index No. 1320-1944

EUGENE T. SINGER, Plaintiff,

against

THE YOKOHAMA SPECIE BANK, LTD. and ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in the State of New York of Yokohama Specie Bank, Ltd., Defendants

NOTICE OF ENTRY OF JUDGMENT ON REMITTITUR OF COURT OF APPEALS

SIR:

Please Take Notice that a Judgment, of which the within is a true copy, was this day duly entered and filed in the office of the Clerk of the County of New York.

November 25, 1949.

Yours, etc., Cravath, Swaine & Moore, Attorneys for Plaintiff, 15 Broad Street, New York, N. Y.

To Edward Feldman, Esq., Attorney for Defendant, Elliott V. Bell as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., 80 Spring Street, New York, N. Y.

[fol. 545] SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK

Index No. 1320-1944

EUGENE T. SINGER, Plaintiff,

against

THE YOKOHAMA SPECIE BANK, LTD. and ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in the State of New York of Yokohama Specie Bank, Ltd., Defendants

JUDGMENT ON REMITTITUR OF COURT OF APPEALS

Defendant, Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd. having appealed to the Court of Appeals of the State of New York from the judgment of the Appellate Division of the Supreme Court, First Judicial Department, entered and filed in the office of the Clerk of the County of New York, on May 19, 1948, and from the order of said Appellate Division, dated and filed May 17, 1948, upon which said judgment is based, which unanimously affirmed, without opinion and without costs, the judgment of the Supreme Court, New York County, dated March 13, 1947, and entered and filed in the office of the Clerk of the County of New York on March 15, 1947, adjudging (1) that plaintiff is a creditor of Yokohama Specie Bank, Ltd., whose claim arose out of a transaction with its New York Agency and his claim is entitled to preference against the assets in New York of the Yokohama Specie Bank, Ltd., pursuant to the provisions of Section 606, Subdivision 4 (a) of the Banking Law of the State of New York; and (2) that plaintiff recover of the defendant, Elliott V. Bell, as Superin-
[fol. 546] tendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of the Yokohama Specie Bank, Ltd., the sum of $557,561.25, together with interest thereon from October 29, 1942, in the sum of $146,279.62, and costs and disbursements of $141.10, amounting in the aggregate to the sum of $703,981.97; and

Plaintiff having appealed to said Court of Appeals from said judgment and order of said Appellate Division insb-

far as said judgment and order affirmed that part of the judgment of the Supreme Court, New York County entered in the office of the Clerk of the County of New York on March 15, 1947, which failed to award to the plaintiff interest from January 14, 1942 to October 29, 1942, upon the principal amount of plaintiff's claim;

And, after argument, said Court of Appeals, on the 14th day of April, 1949, having made an order and judgment reversing, without costs, the judgments appealed from and remitting the case to the Supreme Court, New York County, for the entry of judgment in accordance with the opinion of said Court of Appeals;

And said defendant and plaintiff, by motion and cross-motion, respectively, having moved before said Court of Appeals for an amendment of its Remittitur, and an order having been made by said Court of Appeals on July 19, 1949, amending said Remittitur as follows:

> "The Supreme Court is directed to enter a judgment adjudging that plaintiff-respondent-appellant recover of the defendant-appellant-respondent, Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., the sum of $557,561.25 without interest, which sum shall constitute a preferred claim payable out of the assets of the Yokohama Specie Bank Ltd., in the possession of the [fol. 547] defendant-appellant-respondent, Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., the payment of which, however, is subject to the provisions of Executive Order No. 8389, as amended, and the rules and regulations issued pursuant thereto.
>
> "A federal question was presented and necessarily passed upon by this court, viz.: it was held that the provisions of Executive order No. 8389, as amended, and the rules and regulations issued pursuant thereto did not prevent the accrual or creation of the claim sued upon or render such claim void, but merely prevented the payment of the claim until an appropriate federal license is obtained, and that the documents in evidence do not constitute such license."

And an order having been entered herein on August 17, 1949, making said order of said Court of Appeals, dated July 19, 1949, the order of this Court;

And said defendant having moved on July 8, 1949, for a reargument before said Court of Appeals, and upon such reargument dismissing the complaint herein, and said Court of Appeals having made an order on October 6, 1949, denying said motion;

Now, upon the Remittitur of the Court of Appeals of the State of New York, and the aforesaid orders dated July 19, 1949, August 17, 1949 and October 6, 1949, it is

Adjudged that the judgment entered herein on March 15, 1947 and the judgment of affirmance thereof of the Appellate Division, First Department, entered herein on May 19, 1948, be and the same hereby are modified so as to provide that the plaintiff recover of the defendant, Elliott V. Bell as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., the sum of $557,561.25, without interest, together with costs of $141.10, or a total sum of $557,702.35, which sum shall constitute a preferred claim payable out of the assets of the [fol. 548] Yokohama Specie Bank, Ltd. in the possession of the defendant, Elliott V. Bell as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., the payment of which, however, is subject to the provisions of Executive Order No. 8389, as amended, and the rules and regulations issued pursuant thereto.

Judgment signed and entered this 25th day of November, 1949.

Archibald R. Watson, Clerk. (Seal.)

Date: Nov. 25, 1949.

I hereby certify that the foregoing paper is a true copy of the original thereof, filed in my office on the 25 day of Nov. 1949.

Archibald R. Watson, County Clerk and Clerk of the Supreme Court New York County.

Facsimile signature used pursuant to Chapter 684, Laws of 1947.

No fee for official use.

[fol. 549] [Endorsed:] Index No. 1320-1944. Supreme Court of the State of New York, County of New York.. Eugene T. Singer, Plaintiff, against The Yokohama Specie Bank, Ltd. and Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd., Defendants. Judgment on Remittitur of Court of Appeals and Notice of Entry. Cravath, Swaine & Moore, Attorneys for Plaintiff. 15 Broad Street, New York 5, N. Y.

[fol. 550] Supreme Court of the United States, October Term, 1949

No. 512

Order Allowing Certiorari—Filed February 20, 1950

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

[fol. 551] Supreme Court of the United States, October Term, 1949

No. 527

Order Allowing Certiorari—Filed February 20, 1950

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 513

WILLIAM A. LYON, SUPERINTENDENT OF BANKS OF THE STATE OF NEW YORK, AS LIQUIDATOR OF THE BUSINESS AND PROPERTY OF YOKOHAMA SPECIE BANK, LTD., IN THE STATE OF NEW YORK, PETITIONER,

vs.

BANQUE MELLIE IRAN

No. 528

BANQUE MELLIE IRAN, PETITIONER,

vs.

WILLIAM A. LYON, SUPERINTENDENT OF BANKS OF THE STATE OF NEW YORK, AS LIQUIDATOR OF THE BUSINESS AND PROPERTY OF THE YOKOHAMA SPECIE BANK, LTD., IN THE STATE OF NEW YORK

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED DECEMBER 29, 1949
(Case No. 513)

PETITION FOR CERTIORARI FILED JANUARY 4, 1950
(Case No. 528)

CERTIORARI GRANTED FEBRUARY 20, 1950

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Supreme Court of the State of New York

APPELLATE DIVISION—FIRST DEPARTMENT.

BANQUE MELLIE IRAN,
Plaintiff-Respondent-Appellant,

against

YOKOHAMA SPECIE BANK, LTD., LEO T. CROWLEY, as Alien Property Custodian,

Defendants,

and

ELLIOTT V. BELL, Superintendent of Banks of the State of New York as liquidator of the business and property of the Yokohama Specie Bank, Ltd. in the State of New York,
Defendant-Appellant-Respondent.

Statement Under Rule 234.

This is an appeal by the defendant Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank in the State of New York, from that part of an order granting summary judgment made by the Supreme Court, New York County (Mr. Justice Benedict D. Dineen, presiding) dated June 24, 1946 and the judgment dated July 1, 1946 entered thereon, which—

(1) granted judgment upon the first cause of action to the plaintiff and against the defendant, the Superintendent of Banks, as liquidator, in the sum of $112,205.30 with interest thereon from December 2, 1941 to the

4 *Statement Under Rule 234.*

date of the entry of judgment, amounting in all to the sum of $143,017.08; and

(2) ordered that the aforesaid claim be preferred in the liquidation of the New York Agency of Yokohama Specie Bank, Ltd. pursuant to the provisions of Section 606 4(a) of the Banking Law; and

(3) failed to grant in toto the cross application of the Superintendent of Banks for summary judgment dismissing the first cause
5 of action.

The Superintendent has withdrawn that part of his appeal which seeks review of an order dated June 26, 1946 denying his application for a stay of proceedings herein until the reestablishment of normal communication with Japan.

Plaintiff also appeals from that part of the aforesaid order dated June 24, 1946 and judgment dated July 1, 1946 which granted the Superintendent of Banks' cross application for summary judgment to the extent of dismissing the third
6 cause of action in the sum of $3,701.00, and the sum of $255.97 contained in the first cause of action.

The action was commenced by the service of a summons and complaint upon the defendant, the Superintendent of Banks, on August 7, 1943 who interposed his answer on October 8, 1943.

Service has not been effected upon the defendant, Yokohama Specie Bank, Ltd., the foreign corporation; no answer has been interposed on its behalf and the action against it has been severed by order dated June 24, 1946. The action against the defendant, Crowley, has been discontinued.

Notice of Appeal by Defendant Superintendent of Banks. 7

Plaintiff appears by its attorneys, Winthrop, Stimson, Putnam & Roberts, Esqs., while the defendant, Elliott V. Bell, as Superintendent of Banks, appears by his attorney, Edward Feldman, Esq. There has been no change of parties or attorneys.

Notice of Appeal by Defendant Superintendent of Banks.

8

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

BANQUE MELLIE IRAN,
Plaintiff,

against

THE YOKOHAMA SPECIE BANK, LTD., ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of THE YOKOHAMA SPECIE BANK, LTD., in the State of New York, and LEO T. CROWLEY, as Alien Property Custodian,
Defendants. 9

Sirs:

PLEASE TAKE NOTICE that the defendant ELLIOTT V. BELL, Superintendent of Banks of the State of

10 *Notice of Appeal by Defendant Superintendent of Banks.*

New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York, hereby appeals to the Appellate Division of the Supreme Court in and for the First Department, from that part of the order of Mr. Justice Benedict D. Dineen, dated June 24, 1946, and entered and filed in the office of the Clerk of the County of New York on June 26, 1946, and from that part of the judgment dated July 1, 1946, and entered and filed on July 1, 1946, in the
11 office of the Clerk of the County of New York which:

1. Ordered and adjudged that plaintiff have judgment under the first cause of action set forth in the complaint in the sum of $112,205.30 with interest thereon from December 2, 1941, amounting in all to the sum of $143,017.08, against the defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York;
12

2. Ordered and adjudged that the sum of $112,205.30 with interest from December 2, 1941, amounting in all to the sum of $143,017.08, shall constitute a preferred claim in the liquidation of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York, under the provisions of Section 606, Subdivision 4(a) of the Banking Law of the State of New York;

3. Failed to grant the cross motion of Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the

business and property of The Yokohama Specie Bank, Ltd. in the State of New York, for summary judgment dismissing the entire first cause of action set forth in the complaint.

PLEASE TAKE NOTICE that ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York, will also bring up for review at the same time, an order made by Mr. Justice Benedict D. Dineen, dated June 24, 1946, and entered and filed in the office of the Clerk of the County of New York on June 26, 1946, denying his application for a stay of proceedings herein.

Dated: New York, N. Y., July 16, 1946.

Yours etc.,

EDWARD FELDMAN,

Attorney for Defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York,

Office and P. O. Address,
80 Spring Street,
Borough of Manhattan,
City of New York.

To:

WINTHROP, STIMSON, PUTNAM & ROBERTS, Esqs.,
Attorney for Plaintiff,
Office and P. O. Address,
32 Liberty Street,
Borough of Manhattan,
City of New York.

ARCHIBALD R. WATSON, Esq.,
Clerk of the County of New York.

16 **Notice of Appeal by Plaintiff.**

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

BANQUE MELLIE IRAN,
Plaintiff,

against

17 THE YOKOHAMA SPECIE BANK, LTD., ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of THE YOKOHAMA SPECIE BANK, LTD., in the State of New York, and LEO T. CROWLEY, as Alien Property Custodian,
Defendants.

Sirs:

18 PLEASE TAKE NOTICE that the plaintiff hereby appeals to the Appellate Division of the Supreme Court, in and for the First Department, from so much of the order of Mr. Justice Benedict D. Dineen, dated June 24, 1946 and entered and filed in the Office of the Clerk of the County of New York on June 26, 1946, which ordered that the cross motion of the defendant Elliot V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York, for summary judgment dismissing the complaint of the plaintiff as against the said

defendant, be granted to the extent of dismissing the sum of $255.97 contained in the first cause of action set forth in the complaint and dismissing the third cause of action in the sum of $3,701 and from so much of the judgment entered thereon on the 1st day of July, 1946 in the Office of the Clerk of the County of New York which adjudged that the sum of $255.97 contained in the first cause of action set forth in the complaint be dismissed and that the third cause of action in said complaint be dismissed.

Dated, New York, July 22nd, 1946.

Yours &c.,

WINTHROP, STIMSON, PUTNAM & ROBERTS,
Attorneys for Plaintiff,
Office & Post Office Address:
32 Liberty Street,
Borough of Manhattan,
City of New York.

To:

EDWARD FELDMAN, Esq.,
Attorney for Defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York,
80 Spring Street,
Borough of Manhattan,
City of New York.

ARCHIBALD R. WATSON, Esq.,
Clerk of the County of New York.

22 **Judgment Appealed From.**

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

BANQUE MELLIE IRAN,
Plaintiff,

against

23 THE YOKOHAMA SPECIE BANK, LTD., ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of THE YOKOHAMA SPECIE BANK, LTD., in the State of New York, and LEO T. CROWLEY, as Alien Property Custodian,
Defendants.

24 The plaintiff above named having moved pursuant to Rule 113 of the Rules of Civil Practice for judgment against defendant Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of The Yokohama Specie Bank, Ltd., in the State of New York, and the said defendant having made a cross-motion pursuant to said Rule 113 of the Rules of Civil Practice for judgment dismissing the plaintiff's complaint, and the said motion and cross-motion having duly come on to be heard before Hon. Benedict D. Dineen, Justice of this Court, at Special Term, Part III, thereof, and an order having been made by said Court on the 24th day of June, 1946, directing judgment in favor of the plaintiff as hereinafter provided and

in favor of the defendant as hereinafter provided, and said order having been duly entered on the 26th day of June, 1946;

Now, on motion of Winthrop, Stimson, Putnam & Roberts, attorneys for the plaintiff herein, it is

ADJUDGED, that plaintiff, Banque Mellie Iran, recover of defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of The Yokohama Specie Bank, Ltd., in the State of New York the sum of $112,205.30, with interest thereon from the 2nd day of December, 1941, amounting in all to the sum of $143,017.08; and it is

FURTHER ADJUDGED, that the said sum of $112,205.30 with interest thereon from the 2nd day of December, 1941, amounting in all to the sum of $143,017.08 shall constitute a preferred claim under Section 606, subdivision 4(a), of the Banking Law of the State of New York in the liquidation of said The Yokohama Specie Bank, Ltd., payable as such out of the assets of The Yokohama Specie Bank, Ltd., in the possession of defendant Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of The Yokohama Specie Bank, Ltd., in the State of New York, the payment of which, however, is subject to the provisions of Executive Order of the President of the United States No. 8389 as amended; and it is

FURTHER ADJUDGED, that the sum of $255.97 contained in the first cause of action set forth in the complaint be dismissed and that the third cause of action in said complaint be dismissed.

Dated: July 1, 1946.

ARCHIBALD R. WATSON,
Clerk.

28

Order Appealed From.

At a Special Term, Part III, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House in the Borough of Manhattan, City of New York, on the 24th day of June, 1946.

Present:

29 Honorable BENEDICT D. DINEEN,
Justice.

BANQUE MELLIE IRAN,
Plaintiff,

against

THE YOKOHAMA SPECIE BANK, LTD., ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as Liquidator of the Business and
30 Property of THE YOKOHAMA SPECIE BANK, LTD., in the State of New York, and LEO T. CROWLEY, as Alien Property Custodian,
Defendants.

The plaintiff above named having duly made a motion for an order, pursuant to Rule 113 of the Rules of Civil Practice, striking out the answer interposed herein by defendant Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property

of The Yokohama Specie Bank, Ltd., in the State of New York, and directing summary judgment in favor of the plaintiff against said defendant, and said defendant having made a cross-motion for an order, pursuant to Rule 113 of the Rules of Civil Practice, for summary judgment dismissing the complaint of the plaintiff, and the said motions having come on to be heard,

Now, on reading and filing the plaintiff's notice of motion dated January 22, 1946; the affidavit of Allen T. Klots, sworn to the 17th day of January, 1946; the affidavit of L. I. Estrin, sworn to the 18th day of January, 1946, together with Exhibits A-1 through A-12 and Exhibit B thereto annexed; the affidavit of Walter J. Holzka, sworn to the 17th day of January, 1946, together with Exhibits A-1 through A-4, B-1 through B-4, C-1 through C-4, D-1 through D-4, E-1 through E-4, F-1 through F-4, G-1 through G-4, H-1 through H-4, I-1 through I-4, J-1 through J-4, K-1 through K-4, L-1 through L-4, M, N-1 through N-7, O and P thereto annexed; the affidavit of Mohammad Hossein Sadri, sworn to the 2nd day of June, 1945, together with Exhibits A-1 through A-6, B-1 through B-6, C-1 through C-4, D-1 through D-2, E-1 through E-5, F-1 through F-8, G-1 through G-3, H-1 through H-4, I-1 through I-4, J-1 through J-3, K-1 through K-4, L-1 through L-3 and M-1 through M-5 thereto annexed; the affidavit of William P. Leary, sworn to the 21st day of January, 1946, together with Exhibits A through E thereto annexed; and the affidavit of Walter J. Holzka, sworn to the 22nd day of March, 1946, together with Exhibit A thereto annexed; all of said affidavits having been read in support of plaintiff's said motion and in

opposition to said defendant's said cross-motion; and upon reading and filing the pleadings herein;

And upon reading and filing the notice of said defendant's cross-motion dated the 19th day of March, 1946; the affidavit of Benjamin Hinerfeld, sworn to the 19th day of March, 1946, together with Exhibits A through C thereto annexed; the affidavit of Frank Kearns, sworn to the 19th day of March, 1946, together with Exhibits A, B-1 through B-11, C, D, E, F, G, H, I, J, K, L and M
35 thereto annexed; the affidavit of Henry L. Bayles, sworn to the 10th day of April, 1946, together with Exhibits A through Q thereto annexed; the affidavit of George W. Burns, sworn to the 1st day of April, 1946, together with Exhibits A through D thereto annexed; the affidavit of Frank N. Powelson, sworn to the 9th day of April, 1946; the affidavit of John Frank Wood, sworn to the 10th day of April, 1946, together with a copy of Chapter 65 of the Laws of 1946 and a memorandum relating to Senate Introductory 428, Print 429, Assembly Introductory 460, Print 461 thereto
36 annexed, neither of said documents being marked as exhibits; the affidavit of Charles H. Schoch, sworn to the 10th day of April, 1946; the affidavit of Edward Feldman sworn to the 18th day of June, 1946; all of which affidavits were read in support of the defendant's said cross-motion for summary judgment and in opposition to the plaintiff's said motion for summary judgment;

Now, after hearing Allen T. Klots, Esq., of counsel, in support of the plaintiff's said motion and in opposition to the said defendant's cross-motion, and Henry L. Bayles, Esq., of counsel, in opposition to plaintiff's motion and in support

of said defendant's cross-motion, and due deliberation having been had thereon, and upon filing the opinion of the Court, it is 37

ORDERED that plaintiff's motion for summary judgment be granted to the extent of directing the entry of judgment in the sum of $112,205.30 with interest thereon from December 2, 1941, under the first cause of action set forth in the complaint, in favor of plaintiff against the defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of The Yokohama Specie Bank, Ltd., in the State of New York, and it is further 38

ORDERED, that the said sum of $112,205.30 with interest thereon from December 2, 1941 shall constitute a preferred claim in the liquidation of the Business and Property of The Yokohama Specie Bank, Ltd. in the State of New York, under the provisions of Section 606, Subdivision 4(a), of the Banking Law of the State of New York, the payment of which, however, is subject to the provisions of Executive Order No. 8389 as amended, 39 and it is further

ORDERED, that plaintiff's motion for summary judgment be denied insofar as it is based on the second cause of action set forth in the complaint, and it is further

ORDERED, that the cross-motion of the said defendant, Elliott V. Bell, as Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of The Yokohama Specie Bank, Ltd., in the State of New York, for

summary judgment dismissing the complaint as against the said defendant, be granted to the extent of dismissing the sum of $255.97 contained in the first cause of action set forth in the complaint, and dismissing the third cause of action in the sum of $3,701.00, and it is further

ORDERED, that the action is hereby severed and continued against the defendant, The Yokohama Specie Bank, Ltd., as though judgment herein were not entered.

Enter,

B. D.,
J. S. C.

Filed, June 26, 1946,

New York County Clerk's Office.

Plaintiff's Notice of Motion.

[SAME TITLE.]

Sir:

PLEASE TAKE NOTICE that upon the pleadings herein and the affidavits of Allen T. Klots and Walter J. Holzka, each sworn to on the 17th day of January, 1946, the affidavit of L. I. Estrin, sworn to on the 18th day of January, 1946, the affidavit of Mohammad Hossein Sadri, sworn to on the 2nd day of June, 1945, and the affidavit of William P. Leary, sworn to on the 21st day of January, 1946, the undersigned will move this Court at a Special Term, Part III thereof, to be held at the County Courthouse, Foley Square, in

the Borough of Manhattan, City, County and State of New York, on the 5th day of February, 1946, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard for an order pursuant to Rule 113 of the Rules of Civil Practice directing that the answer of the defendant The Yokohama Specie Bank, Ltd., New York Agency, by Elliott V. Bell, Superintendent of Banks of the State of New York, be struck out and that judgment be entered herein for plaintiff and for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE NOTICE that pursuant to the provisions of Rule 64 of the Rules of Civil Practice answering affidavits, if any, to be submitted in opposition to this motion must be served at least five (5) days before the return day thereof.

Dated: January 22nd, 1946.

Yours, etc.,

WINTHROP, STIMSON, PUTNAM & ROBERTS,
Attorneys for Plaintiff,
Office and Post Office Address,
32 Liberty Street,
New York 5, New York.

To:

EDWARD FELDMAN, Esq.,
Attorney for Defendant, Elliott V. Bell, Superintendent of Banks of the State of New York,
526 Broadway,
New York 12, New York.

Affidavit of Allen T. Klots, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

[Same Title.]

State of New York,
County of New York, } ss.:

Allen T. Klots, being duly sworn, deposes and says:

1. I am an attorney and counsellor at law, and
47 a member of the firm of Winthrop, Stimson, Putnam & Roberts, attorneys for the plaintiff herein.

2. I am familiar with this action, having been in charge thereof since its inception, and I make this affidavit in support of a motion by the plaintiff to the effect that the answer may be struck out and summary judgment entered in favor of the plaintiff. There are attached hereto and submitted herewith in support of the motion the affidavits of L. I. Estrin, Walter J. Holzka, Mohammad Hossein Sadri and William P. Leary.

48 3. The plaintiff herein is a foreign corporation, being a banking corporation organized under the laws of Iran, with its principal place of business at Teheran, Iran.

4. The defendants herein are Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the business and property of The Yokohama Specie Bank, Ltd. and The Yokohama Specie Bank, Ltd., New York Agency, in liquidation. Leo T. Crowley, as Alien Property Custodian, was originally named as a defendant, but did not consent to appear, and a stipula-

tion was thereupon entered consenting to the discontinuance of the action against him.

5. By this action plaintiff seeks judgment against the defendants in the sum of $116,162.27, with interest thereon from the 2nd day of December, 1941, and adjudging that the claim for this amount shall be preferred in accordance with Section 606 of the Banking Law of the State of New York against the assets of The Yokohama Specie Bank, Ltd. in this State and in the possession of Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator.

6. The basis of the causes of action set forth in the complaint is that plaintiff has a claim against The Yokohama Specie Bank, Ltd. which arose out of transactions had by the plaintiff with the New York Agency of The Yokohama Specie Bank, Ltd., that plaintiff's name appears as a creditor on the books of said Agency, and that, therefore, for both reasons, under Section 606 of the Banking Law of the State of New York, plaintiff's claim is preferred against the assets of the defendant, The Yokohama Specie Bank, Ltd., in this State, which are now in the possession of the defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator.

7. The complaint contains three causes of action.

The first cause of action alleges in substance that on various occasions between February 26, 1941 and July 22, 1941, plaintiff caused to be paid in New York City to the New York Agency of

defendant, The Yokohama Specie Bank, Ltd., sums of money aggregating the total of $113,461.21; that said defendant by its New York Agency accepted and received said sums and promised and agreed that it would open certain commercial credits with certain of its branches in Japan, and that in the event that these credits were not utilized it would refund to the plaintiff the sums paid to it, or such sums as were not utilized; that
53 the commercial credits opened for said sums were not utilized and expired prior to December 2, 1941, with the exception that the sum of $1,000 was paid under a certain letter of credit; and that when said credits expired without being utilized The Yokohama Specie Bank, Ltd. became obligated to refund the balance to plaintiff, which amounted to $112,461.27.

It is further alleged in the first cause of action that prior to December 2, 1941, The Yokohama Specie Bank, Ltd. notified and instructed its New York Agency to refund this sum to plaintiff, and
54 the New York Agency notified plaintiff through plaintiff's agent, Irving Trust Company, to that effect. It is then alleged that on December 8, 1941, before the New York Agency of defendant, The Yokohama Specie Bank, Ltd., refunded or paid said sum to plaintiff, defendant, Superintendent of Banks, as Liquidator aforesaid, took possession of the business and property in New York of the defendant, The Yokohama Specie Bank, Ltd., pursuant to the provisions of the Banking Law of the State of New York.

It is alleged that in view of the foregoing plaintiff's claim arises out of a transaction with the

Affidavit of Allen T. Klots, Read in Support of Plaintiff's Motion, and in Opposition to Defendant's Cross-Motion.

New York Agency of The Yokohama Specie Bank, Ltd., and that plaintiff's name appears as a creditor on the books of said Agency—and that therefore under Section 606 of the Banking Law the claim is preferred against the assets of defendant in this State.

It is alleged that the plaintiff duly filed its claim with the Superintendent of Banks within the time required, that said claim has been rejected, and that this suit was instituted after the lapse of the required time.

8. The second cause of action is to recover the sum of $112,205.30, on the ground that as to this portion of the total amount of the claim an account was taken and stated between the plaintiff and the defendant, The Yokohama Specie Bank, Ltd., through its New York Agency, on December 2, 1941. It is alleged that for this additional reason plaintiff's claim arises out of a transaction with the New York Agency and its name appears as a creditor on the books of said Agency—and that therefore under Section 606 of the Banking Law the claim is preferred against the assets of defendant in this State.

9. The third cause of action is for the sum of $3,701. This represents a payment made by the plaintiff to The Yokohama Specie Bank, Ltd., New York Agency, on or about March 20, 1941 on the same terms and conditions as the payments covered in the first cause of action. It further alleges that the credit with respect to which this payment was made was not utilized and that the defendant, The Yokohama Specie Bank, Ltd.,

58 *Affidavit of Allen T. Klots, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

thereupon became obligated to refund the said sum of $3,701. The complaint does not allege that as to this sum The Yokohama Specie Bank, Ltd., notified and instructed its New York Agency to refund the same to the plaintiff or that the said New York Agency of defendant notified the plaintiff to that effect. This cause of action does not allege that a claim for this sum was filed with the defendant Superintendent of Banks within
59 the time allotted for the filing of claims.

10. The answer of the defendant, The Yokohama Specie Bank, Ltd., by Elliott V. Bell, Superintendent of Banks of the State of New York, admits (paragraphs 2 and 12) that all the sums claimed by the plaintiff to have been paid to the New York Agency of the defendant in New York, to wit: $117,162.27 were received by the said New York Agency from Irving Trust Company as plaintiff's agent.

The answer of the defendant also admits (paragraph 4) that prior to December 8, 1941 the New
60 York Agency received telegraphic instructions from the Osaka, Nagoya and Tokyo offices of The Yokohama Specie Bank, Ltd. to pay to the Irving Trust Company for the account of the plaintiff various sums of money amounting to a total of $112,205.30, and admits (paragraph 4) that the New York Agency of The Yokohama Specie Bank, Ltd. prior to December 8, 1941 advised the Irving Trust Company of the receipt of said instructions.

The answer also admits as to the amounts covered by the first and second causes of action that a claim was filed within the time specified, that the

(P.29)

ADVICE FOR

IRVING TRUST COMPANY

ONE WALL STREET

YOKOHAMA SPECIE BANK LTD.
NEW YORK, N. Y.

NEW YORK DATE FEB. 26, 1941 AML

WE CREDIT YOUR ACCOUNT. VALUE TODAY. $ 4,950.00

ACCOUNT OF ~~Our~~ CREDIT YOKOHAMA SPECIE BANK LTD., OSAKA BY CABLE
CREDIT 12/5613; 12/5614 AND 12,5615 FOR $3,200, $1,100 AND $650.,
RESPECTIVELY.

BY ORDER OF

PAID

FEB 26 1941

THE YOKOHAMA SPECIE BANK LIMITED

H. TAKAHIRO

DEPOSITED BY BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

INSTRUCTIONS DATED FEB. 25

IRVING TRUST COMPANY

BY

A 365/70

Exhibit A-1

ADVICE FOR

IRVING TRUST COMPANY

ONE WALL STREET

YOKOHAMA SPECIE BANK, LTD.
NEW YORK, N.Y.

NEW YORK DATE MARCH 4, 1941

WE CREDIT YOUR ACCOUNT. VALUE TODAY. $ 5,870.97

ACCOUNT OF YOUR OSAKA OFFICE WITH ADVICE BY CABLE
BY ORDER OF CONSISTING OF ¥4,165.00 ¥255.97 AND ¥1,450.
ACCOUNT CREDITS 12/5624 12/5633 AND 12/5632 RESPECTIVELY.

H. TAKAHIRO

PAID

MAR 4 1941

THE YOKOHAMA SPECIE BANK LIMITED

DEPOSITED BY BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

INSTRUCTIONS DATED MAR. 2

IRVING TRUST COMPANY

BY

A 365/70

Exhibit A-2

Affidavit of Allen T. Klots, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

claim was rejected, that no part thereof has been paid and that suit was instituted after the expiration of the statutory waiting period. 61

In addition, the answer contains denials of certain allegations, and certain affirmative defenses.

11. The affirmative defenses pleaded by the defendant in its answer raise no issues of fact which defeat the plaintiff's claim, and are all insufficient in law. 62

12. From the foregoing it will be seen that, on the basis of the pleadings themselves, there is no dispute as to the essential facts entitling the plaintiff to judgment on the claims asserted in the first and second causes of action; namely, there is no dispute as to the fact that the monies covered by these causes of action were paid to the New York Agency of The Yokohama Specie Bank, Ltd., that The Yokohama Specie Bank, Ltd. thereafter instructed the New York Agency to repay them to the plaintiff, and the New York Agency so advised the plaintiff prior to the time that the 63
defendant Superintendent of Banks took over. Under a recent decision of the highest court of this State, these facts alone establish a claim arising out of a transaction had with the New York Agency, entitling the plaintiff to a preference against the assets of the defendant in New York under Section 606 of the Banking Law (*Singer v. Yokohama Specie Bank, Limited*, 293 N. Y. 542).

In addition, other facts which cannot be disputed establish that plaintiff's claim arises out of a transaction had with the New York Agency

64 *Affidavit of Allen T. Klots, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

and that plaintiff's name appears with respect to these amounts as a creditor on the books of said Agency.

13. All of the facts showing the details under which the monies sued for were paid in to the New York Agency and the circumstances under which plaintiff became entitled to their repayment are shown in the annexed affidavits of Mohammed
65 Hossein Sadri, L. I. Estrin and Walter J. Holzka, and the documents attached thereto. As will be seen from these affidavits, the evidence on which these facts are based is all documentary, and copies of the documents are attached in full and are available to the court on this motion. These affidavits establish the validity of plaintiff's claims asserted in the first and second causes of action, the fact that they arise out of transactions had with the New York Agency, and, in addition, that plaintiff's name appears with respect to these amounts as a creditor on the books of said
66 Agency.

14. The facts as to plaintiff's claim with respect to $3,701, covered in the third cause of action, also appear in these affidavits, and are based entirely on the documents attached.

WHEREFORE, deponent prays that the answer of the defendant herein may be struck out and judgment entered in favor of the plaintiff for the relief demanded in the complaint.

ALLEN T. KLOTS.

(Sworn to before Edna H. Parker, January 17, 1946.)

88

89

Exhibits A-4, A-5, A-6, Annexed to Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

(See opposite ☞)

IRVING TRUST COMPANY
NEW YORK

WE CREDIT YOUR ACCOUNT AS FOLLOWS: DATE MARCH 20, 1941

DESCRIPTION	AMOUNT
REFER YOUR LETTER FEB. 6TH RE: CREDIT 12/5515 BANQUE MELLIE IRAN CHIEF OFFICE, TEHERAN MESSAGE: "UNDERSTAND AGREEMENT MADE" ADVISE YOUR OSAKA OFFICE BY WIRE.	$3,701.00

PAID

T. TAKAHIRO

IRVING TRUST CO. NEW

TO YOKOHAMA SPECIE BANK, LTD.
NEW YORK, N.Y. MAR 21 1941

THE YOKOHAMA SPECIE BANK LIMITED

(P 29 Cont'd) Exhibit A-3

67

Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

[Same Title.]

State of New York, }
County of New York, } ss.:

L. I. Estrin, being duly sworn, deposes and says:

1. That he is an officer, to wit, a Vice President, of Irving Trust Company, a domestic banking corporation, having its principal place of business at No. 1 Wall Street, in the Borough of Manhattan, City of New York. 68

2. At various times during the year 1941 Irving Trust Company, acting on behalf of Banque Mellie Iran, paid to The Yokohama Specie Bank, Ltd., New York Agency, in New York City certain sums of money aggregating $117,162.27. On each occasion, Irving Trust Company advised The Yokohama Specie Bank, Ltd., New York Agency, that these payments were made at the order of Banque Mellie Iran for use in connection with certain credits which Banque Mellie Iran desired to have opened with The Yokohama Specie Bank, Ltd. Irving Trust Company at the same time advised said The Yokohama Specie Bank, Ltd., New York Agency, in each case of the amount and the number used to designate the credit in question, and requested it to advise certain of its offices in Japan of the payment then made. The date when each payment was made, the amount thereof, the number assigned to the credit involved, and the office of The Yokohama Specie Bank, Ltd., which the 69

ADVICE FOR ↓

IRVING TRUST COMPANY

ONE WALL STREET
NEW YORK

DATE APR.9,1941 B

YOKOHAMA SPECIE BANK,LTD.
NEW YORK, N.Y.

WE CREDIT YOUR ACCOUNT. VALUE TODAY. $ 1,739.53

ACCOUNT OF CREDIT YOUR TOKIC OFFICE WITH ADVICE BY WIRE.
CREDIT 13/7032

BY ORDER OF

BANQUE MELLIE IRAN
CHIEF OF ICE.
TEHERAN, IRAN

DEPOSITED BY

PAID
APR 9 1941
THE YOKOHAMA SPECIE BANK
LIMITED

J. TAKAHIRO

INSTRUCTIONS DATED APR.8

IRVING TRUST COMPANY
BY

A 365/70

Exhibit A-4

ADVICE FOR ↓

IRVING TRUST COMPANY

ONE WALL STREET
NEW YORK

DATE 4/18 APR. 17,1941 H

YOKOHAMA SPECIE BANK LTD.
NEW YORK, N.Y.

WE CREDIT YOUR ACCOUNT. VALUE TODAY. $ 95,135.57

ACCOUNT OF YOUR NAGOYA OFFICE UNDER CABLE ADVICE.
ACCOUNT CREDIT 12/5489

BY ORDER OF

I. TAKAHIRO

PAID
APR 17 1941
THE YOKOHAMA SPECIE BANK
LIMITED

DEPOSITED BY

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

INSTRUCTIONS DATED APR.16

IRVING TRUST COMPANY
BY

A 365/70

Exhibit A-5

DEPOSITED BY

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

APR 17 1941
THE YOKOHAMA SPECIE BANK
LIMITED

INSTRUCTIONS DATED APR.16

IRVING TRUST COMPANY
BY

A 365/70

Exhibit A-5

ADVICE FOR ↓

IRVING TRUST COMPANY

ONE WALL STREET
NEW YORK

DATE MAY 21,1941

YOKOHAMA SPECIE BANK,LTD.
NEW YORK, N.Y.

WE CREDIT YOUR ACCOUNT. VALUE TODAY. 5/22 $ 1,900.00

ACCOUNT OF YOUR TOKYO OFFICE FOR ACCOUNT CREDIT 13/7136.
ADVISE BENEFICIARY BY CABLE.

BY ORDER OF

I. TAKAHIRO

PAID
MAY 21 1941
THE YOKOHAMA SPECIE BANK
LIMITED

DEPOSITED BY

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

INSTRUCTIONS DATED MAY 20

IRVING TRUST COMPANY
BY

A 365/70

Exhibit A-6

70 *Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

said New York Agency was requested to advise were as follows:

Date of Payment to New York Agency	Amount	Number Assigned to Credit Involved	Branch of The Yokohama Specie Bank, Ltd., to be Notified
February 26, 1941	$ 3,200.00	12/5613	Osaka
February 26, 1941	1,100.00	12/5614	Osaka
71 March 4, 1941	1,450.00	12/5632	Osaka
March 4, 1941	255.97	12/5633	Osaka
March 20, 1941	3,701.00	12/5515	Osaka
April 9, 1941	1,739.53	13/7032	Tokyo
April 17, 1941	95,135.57	12/5489	Nagoya
May 21, 1941	1,900.00	13/7136	Tokyo
May 29, 1941	200.00 increase of	12/5614	
June 2, 1941	1,252.50	13/7157	Tokyo
June 2, 1941	607.50	13/7158	Tokyo
June 26, 1941	858.65	12/5489	Nagoya
72 July 2, 1941	501.55	13/7211	Tokyo
July 11, 1941	500.00	13/7225	Tokyo
July 22, 1941	4,760.00	13/7234	Tokyo

3. Payment of the sum in question by Irving Trust Company on behalf of Banque Mellie Iran to the New York Agency of The Yokohama Specie Bank, Ltd., was made in each case by crediting the account which said New York Agency then maintained with Irving Trust Company. At the same time, in each instance, the account of Banque Mellie Iran with Irving Trust Company was charged with a corresponding amount.

Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 73

4. At the time of each payment set forth in paragraph 2 hereof, Irving Trust Company handed to The Yokohama Specie Bank, Ltd., New York Agency, at its office, 120 Broadway, New York City, an advice slip, advising it of the amount paid into its account, the office in Japan to be notified and credited, and the number assigned to the credit being opened with respect to which the payment was made. Photostatic copies of each advice delivered with respect to 74
each payment, made from the originals in the possession of the defendant Superintendent of Banks, are hereto annexed as Exhibits A-1 to A-12, inclusive. The stamp bearing the inscription "Paid ..... Date ..... The Yokohama Specie Bank Limited" was not on these documents at the time of their delivery by Irving Trust Company to The Yokohama Specie Bank, Ltd., New York Agency.

5. On December 2, 1941, the New York Agency of The Yokohama Specie Bank, Ltd., addressed 75
a letter to Irving Trust Company setting forth that it had been requested by its Tokyo, Nagoya and Osaka branches to refund to Irving Trust Company sums which previously had been paid to the New York Agency of The Yokohama Specie Bank, Ltd., in the aggregate amount of $110,465.80, provided the said New York Agency was authorized to do so by the appropriate license of the United States Treasury Department. This letter was received by Irving Trust Company on December 3, 1941. Attached hereto and made a part hereof and marked Exhibit B is a copy of

said letter. As appears from the affidavit of Walter J. Holzka hereto annexed and in particular Exhibit N-3 thereto attached, the New York Agency of The Yokohama Specie Bank, Ltd., also received a direction to refund to Irving Trust Company on account of Banque Mellie Iran an additional sum of $1,739.53, making a total amount directed to be refunded, as shown by the documents, of $112,461.27. Before a license could be
77 obtained from the United States Treasury Department to authorize the payment of said sums to Irving Trust Company, the Superintendent of Banks of the State of New York took possession of the business and property of the New York Agency of The Yokohama Specie Bank, Ltd., and no part thereof has ever been refunded to Irving Trust Company for the account of Banque Mellie Iran.

6. I have been engaged in foreign banking for thirty years. The Irving Trust Company, of
78 which I am an officer, has had for many years a very large foreign banking business, including numerous transactions with banks in Iran and Japan. I am familiar with the banking procedures attendant upon the conduct of international trade and the use of terms employed in international commercial banking.

7. I have seen the copies of the cables passing between the plaintiff and the various branches of The Yokohama Specie Bank, Ltd., by which the former advised these branches of the opening of the credits involved in this action, more par-

94

Exhibits A-7, A-8, A-9, Annexed to Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

95

(See opposite ☞)

96

Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

ticularly Exhibits A-1, B-1, C-1, D-1, E-1, F-1, G-1, H-1, I-1, J-1, K-1, L-1 and M-1, which are attached to the affidavit of Mohammad Hossein Sadri, sworn to on June 2, 1945.

8. Each of such cables instructs the Japanese branch of The Yokohama Specie Bank, Ltd., to advise the beneficiary of the opening of the credit without the confirmation of The Yokohama Specie Bank, Ltd. According to common usage, the term "confirmed credit" means that bank A, in issuing a credit in favor of a beneficiary, at the request of bank B, engages itself irrevocably to make payments to the beneficiary within the terms and conditions of such credit. Conversely, when bank A receives a request from bank B to notify the beneficiary "without confirmation", the use of these words is understood in international banking practice to mean that in passing the terms of the credit on to the beneficiary, bank A assumes no obligation or commitment on its own part towards the beneficiary or towards bank B.

L. I. ESTRIN.

(Sworn to before Adam N. Keppler, January 18, 1946.)

ADVICE FOR

YOKOHAMA SPECIE BANK, LTD.
NEW-YORK, NEW YORK

IRVING TRUST COMPANY
ONE WALL STREET
NEW YORK

DATE MAY 29, 1941 0

5/31

WE CREDIT YOUR ACCOUNT. VALUE TODAY. $ 200.00

ACCOUNT OF YOUR OSAKA OFFICE - UNDER CABLE ADVICE.
CREDIT 12/5614

BY ORDER OF

E. TAKAHIKO

PAID

MAY 29 1941

THE YOKOHAMA SPECIE BANK LIMITED

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

DEPOSITED BY

INSTRUCTIONS DATED MAY 27

IRVING TRUST COMPANY

By

A 365/70

Exhibit A-7

ADVICE FOR

YOKOHAMA SPECIE BANK, LTD.
NEW YORK, N.Y.

IRVING TRUST COMPANY
ONE WALL STREET
NEW YORK

DATE JUNE 2, 1941 B

WE CREDIT YOUR ACCOUNT. VALUE TODAY. $1,860.00

ACCOUNT OF YOUR TOKYO OFFICE UNDER TELEGRAPHIC ADVICE.
ACCOUNT CREDITS 13/7157 AND 13/7158 FOR $1,252.50 AND $607.50
BY ORDER OF RESPECTIVELY.

PAID

JUN 2 1941

THE YOKOHAMA SPECIE BANK LIMITED

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

DEPOSITED BY

E. TAKAHIKO

INSTRUCTIONS DATED MAY 29

IRVING TRUST COMPANY

By

A 365/70

Exhibit A-8

PAID

JUN 2 1941

THE YOKOHAMA SPECIE BANK LIMITED

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

DEPOSITED BY

E. TAKAHIKO

INSTRUCTIONS DATED MAY 29

IRVING TRUST COMPANY

By

A 365/70

Exhibit A-8

ADVICE FOR

YOKOHAMA SPECIE BANK, LTD.
NEW YORK, N.Y.

IRVING TRUST COMPANY
ONE WALL STREET
NEW YORK

DATE JUNE 26, 1941 AML

WE CREDIT YOUR ACCOUNT. VALUE TODAY. $ 858.65

ACCOUNT OF AND ADVISE BY CABLE YOKOHAMA SPECIE BANK LTD., NAGOYA
ACCOUNT CREDIT 12/5489

BY ORDER OF

PAID

JUN 26 1941

THE YOKOHAMA SPECIE BANK LIMITED

E. TAKAHIKO

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

DEPOSITED BY

INSTRUCTIONS DATED JUNE 25

IRVING TRUST COMPANY

By

A 365/70

Exhibit A-9

82

Exhibits A-1, A-2, A-3, Annexed to Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

83

(See opposite ☞)

84

100

Exhibits A-10, A-11, A-12, Annexed to Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

101

(See opposite ☞)

102

ADVICE FOR ↓

YOMOHAMA SPECIE BANK LTD.
NEW YORK, N.Y.

IRVING TRUST COMPANY

ONE WALL STREET
NEW YORK

DATE JULY 2,1941 H

WE CREDIT YOUR ACCOUNT. VALUE ~~TODAY~~ 7/3 $ 501.55

ACCOUNT OF YOUR TOKYO OFFICE . ADVISE TOKYO BY CABLE.
ACCOUNT CREDIT 13/7211

BY ORDER OF

PAID

I. TAKAHIKO

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

DEPOSITED BY

JUL 2 1941

THE YOKOHAMA SPECIE BANK
LIMITED

INSTRUCTIONS DATED JUNE 30

IRVING TRUST COMPANY

By

B 365/70

Exhibit A-10

ADVICE FOR ↓

YOKOHAMA SPECIE BANK LTD
NEW YORK, N.Y.

IRVING TRUST COMPANY

ONE WALL STREET
NEW YORK

DATE JULY 11, 1941 H

WE CREDIT YOUR ACCOUNT. VALUE TODAY. 7/11 $ 500.00

ACCOUNT OF CREDIT AND CABLE YOUR TOKIO OFFICE
ACCOUNT CREDIT 13/7225

BY ORDER OF

PAID

I. TAKAHIKO

BANQUE MELLIE IRAN
CHIEF OFFICE

JUL 11 1941

INSTRUCTIONS DATED JULY 10

ADVICE FOR ↓

YOKOHAMA SPECIE BANK LTD.
NEW YORK, N.Y.

IRVING TRUST COMPANY

ONE WALL STREET
NEW YORK

DATE JULY 11, 1941 H

WE CREDIT YOUR ACCOUNT. VALUE TODAY. 7/11 $ 500.00

ACCOUNT OF CREDIT AND CABLE YOUR TOKIO OFFICE
ACCOUNT CREDIT 13/7225

BY ORDER OF

PAID

I. TAKAHIKO

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

DEPOSITED BY

JUL 11 1941

THE YOKOHAMA SPECIE BANK
LIMITED

INSTRUCTIONS DATED JULY 10

IRVING TRUST COMPANY

By

B 365/70

Exhibit A-11

ADVICE FOR ↓

YOKOHAMA SPECIE BANK, LTD.
NEW YORK, NEW YORK

IRVING TRUST COMPANY

ONE WALL STREET
NEW YORK

DATE JULY 22, 1941 EM

120 Broadway

WE CREDIT YOUR ACCOUNT. VALUE TODAY. $ 4,760.00

ACCOUNT OF YOUR TOKYO OFFICE, ADVISING THEM BY WIRE.
ACCOUNT CREDIT 13/7234.

BY ORDER OF

I. TAKAHIKO

PAID

JUL 22 1941

DEPOSITED BY

BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

INSTRUCTIONS DATED THE YOKOHAMA SPECIE BANK
LIMITED

IRVING TRUST COMPANY

By

B 365/70

Exhibit A-12

106 **Exhibit B, Annexed to Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

December 2, 1941

Irving Trust Company
One Wall Street
New York, New York

Attention: Mr. Nelson, Foreign Paying Teller

107 Gentlemen:

Referring to our telephone conversation of this morning, we are pleased to confirm below the amounts of payments we received from you for account of our Tokio, Nagoya, and Osaka Offices, and cabled to them at your request, which they have requested us to refund to you provided we are duly authorized by the Treasury Department to do so.

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Date of Payment	Amount	For a/c of our ..... office	Banque Mellie Iran, Teheran L/C Reference	
May 21, '41.....	$ 1,900.00	Tokio	13/7136	
June 2, '41.....	1,252.50	"	13/7157	
"	607.50	"	13/7158	
July 2, '41.....	501.55	"	13/7211	
July 11, '41.....	500.00	"	13/7225	
July 22, '41.....	4,760.00	"	13/7234	
Apr. 17, '41.....	95,135.57	Nagoya	12/5489	
June 26, '41.....	858.65	"	" "	
Feb. 26, '41.....	2,200.00	Osaka	12/5613	Partial refu
"	1,100.00	"	12/5614	
Mar. 4, '41.....	1,450.00	"	12/5632	
May 29, '41.....	200.00	"	12/5614	

Exhibit B, Annexed to Affidavit of L. I. Estrin, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

We have notified our Osaka Office by cable that our application to refund the total amount of $4,950.00 has been denied. In the event that we are permitted to pay this amount to you, we will cable to them for confirmation before making payment to you.

Referring to your letter of December 1, 1941 and our telephone conversation of today, we will not cable to our Tokio Office for refundment to you of your payment of April 9, 1941 of $1,739.53 under credit 13/7032, as you requested, but wait until we are authorized by the Treasury Department to effect payment.

We understand that you have applied to the Federal Reserve Bank for a license that will authorize us to refund the above amounts to you.

Yours very truly,

THE YOKOHAMA SPECIE BANK, LIMITED
p. p. Agent

MEL

112 **Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

[Same Title.]

State of New York,
County of New York, } ss.:

Walter J. Holzka, being duly sworn, deposes and says:

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1. I am an attorney and counselor at law associated with the firm of Winthrop, Stimson, Putnam & Roberts, attorneys for Banque Mellie Iran, the plaintiff herein.

2. I have examined the books and records of the New York Agency of The Yokohama Specie Bank, Ltd., which are in the possession of the Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of The Yokohama Specie Bank, Ltd., in the State of New York.

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3. I am attaching to this affidavit photostatic copies of the various entries appearing on the books and records of The Yokohama Specie Bank, Ltd., New York Agency, which relate to the transactions listed in paragraph Fifth and paragraph Twenty-sixth of the complaint and in the other affidavits submitted on this motion. I have divided certain of these exhibits into groups, so that each group covers the entries made with respect to a particular transaction, and have given each group

a separate letter designation (A, B, C, etc.), with the individual documents numbered serially within the group (A-1, A-2, A-3, etc.). The groups of Exhibits cover the entries with respect to the various transactions, as follows:

	Payments on	Amount	With Respect to Credit Number
Group A	Feb. 26, 1941	$3,200.00	12/5613
		1,100.00	12/5614
Group B	Mar. 4, 1941	1,450.00	12/5632
		255.97	12/5633
Group C	Apr. 9, 1941	1,739.53	13/7032
Group D	Apr. 17, 1941	95,135.57	12/5489
Group E	May 21, 1941	1,900.00	13/7136
Group F	May 29, 1941	200.00	12/5614
Group G	June 2, 1941	1,252.50	13/7157
		607.50	13/7158
Group H	June 26, 1941	858.65	12/5489
Group I	July 2, 1941	501.55	13/7211
Group J	July 11, 1941	500.00	13/7225
Group K	July 22, 1941	4,760.00	13/7234
Group L (third cause of action)	Mar. 21, 1941	3,701.00	12/5515

These entries indicate a uniform practice in dealing with each of these items, as follows:

118 *Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

Upon receipt from Irving Trust Company of the advice described in the affidavit of L. I. Estrin to the effect that the sum or sums in question had been credited to the account of Yokohama Specie Bank, Ltd., with Irving Trust Company, entries were made on a "transfer voucher" to the effect that the Irving Trust Company was to be debited with the amount of the payment on the books of the New York Agency and that the office of Yoko-
119 hama Specie Bank, Ltd., in Japan which had been designated in the advice slip received from Irving Trust Company was to be credited on the books of the New York Agency with the same amount. These transfer vouchers are designated as Exhibits A-1, B-1, C-1, etc., in their respective series hereto attached.

A telegram was dispatched to the office in Japan which had been designated, notifying it of the payment made by Irving Trust Company for account of Banque Mellie Iran and the number assigned to the credit with respect to which it
120 had been paid. A verbatim record of each telegram was kept in the files of the New York Agency. Copies of these records are hereto annexed as Exhibits A-2, B-2, C-2, etc.

Thereupon Irving Trust Company was debited with the amount in question in an account kept by the New York Agency entitled "Cash Record". Copies of the pages of the Cash Record on which the various debits appear are hereto annexed as Exhibits A-3, B-3, C-3, etc.

At the same time an entry was made on the ledger kept by the New York Agency, crediting

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the account of the particular office of The Yokohama Specie Bank, Ltd., in Japan in question. Copies of the sheets of this ledger containing these entries are hereto annexed as Exhibits A-4, B-4, C-4, etc.

A record was also kept entitled "Register of T. T. Receivable", on which were listed chronologically the various payments received by the New York Agency similar to the ones involved in this suit. A copy of the pages of this register 122
covering the period in question is hereto annexed as Exhibit M. Each of the payments made by Irving Trust Company on behalf of Banque Mellie Iran hereinabove referred to appear on this exhibit.

4. The books and records in the possession of the defendant show that none of the funds paid by Irving Trust Company as aforesaid to The Yokohama Specie Bank, Ltd., New York Agency, for the account of Banque Mellie Iran were ever in fact transferred to any of the offices of The 123
Yokohama Specie Bank, Ltd., in Japan, but that they were simply credited to the account of the respective offices in Japan and telegraphic advice given as heretofore stated. The books show that no closing out of the accounts of these offices with the New York Agency was ever had, that no transfer of any balances were made and that a running account continued to be kept between the New York Agency and the various offices in Japan up to and until December 8, 1941, the date on which the defendant Superintendent of Banks took pos-

session of the assets of the New York Agency and the date of the declaration of war between the United States and Japan.

5. Finally, the records of The Yokohama Specie Bank, Ltd., New York Agency, show that the New York Agency of The Yokohama Specie Bank, Ltd., had been requested by the various offices of The Yokohama Specie Bank, Ltd. in Japan in question on or prior to December 2, 1941 to refund to Irving Trust Company on account of Banque Mellie Iran all the amounts listed in paragraph FIFTH of the complaint which had been paid by Banque Mellie Iran to the New York Agency, except the sum of $1,000 which had been paid to the beneficiary in Japan under Credit No. 12/5613, and the sum of $255.97 under Credit No. 12/5633. (See affidavit of Mohammad Hossein Sadri, Exhibits M-3 through M-5, from which it appears that The Yokohama Specie Bank, Ltd. was advising the New York Agency by mail to make the latter refund, and was requested by plaintiff to make it by telegraph instead.) Attached hereto are photostatic copies of the records kept by the New York Agency of the telegrams received from the various offices of The Yokohama Specie Bank, Ltd. in Japan in question, requesting that such refunds be made, as Exhibits N-1 to N-7.

6. I attach hereto as Exhibits O and P photostatic copies of letters dated September 9, 1941 and October 14, 1941 from The Yokohama Specie Bank, Ltd. at Osaka to The Yokohama Specie

Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 127

Bank, Ltd., New York Agency, which relate to certain of the payments referred to in the complaint and the refunds due.

WALTER J. HOLZKA.

(Sworn to before Edna H. Parker, January 18, 1946.)

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Exhibit A-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

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(See opposite ☞)

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TRANSFER VOUCHER

FEB 26 1941

F. Kearns

THE YOKOHAMA SPECIE BANK, LTD., New York,

Inter-Office A/C T. Takahashi Current % With Bankers

Their A/C Clearing Trans. Credit

3200 —	TR 26		
1100 —	" 26		
650 —	" 27		
		A. Suyuki	4950 —

Cash paid by us

Total 4950 —

Cash received by us

Total 4950 —

220

Misc. 170

Exhibit A-1

CASH RECORD

IRVING TRUST COMPANY

BANK CHECK NUMBER	OLD BALANCE	REMARKS	DATE	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	SHEETS NO. NEW BALANCE	SHEETS NO. BANK
Feb. 24,1941.	51199.70							
		IRVING TRUST COMPANY						
		CREDIT 2/18						
				28457.48				
				2141.23				
				2526.18				
				3472.19				
Feb. 25,1941.	87796.78			36597.08			87796.78☆	
		CREDIT 2/21						
986		GUARANTY TRUST COMPANY *****		5.06				
		IRVING TRUST COMPANY			300000.00			
		CREDIT		237139.95				
				532.14				
				5040.00				
Feb. 26,1941.	30413.93			242617.15	300000.00		30413.93☆	
		IRVING TRUST COMPANY						
				50000.00				
				15000.00				
				25632.23				
		CREDIT		25000.00				
				4950.00				
Feb. 27,1941.	150996.16			120582.23			150996.16☆	
		IRVING TRUST CO.						
				100023.94				
				10000.00				
				5363.33				
987.		GUARANTY TRUST COMPANY *****		40000.00				
		CREDIT			250000.00			
				13095.02				
Feb. 28,1941.	69478.45			168482.29	250000.00		69478.45☆	
		IRVING TRUST COMPANY						
				20000.00				
				12933.33				
				15000.00				
988		GUARANTY TRUST COMPANY *****		65370.10				
		CREDIT			150000.00			
				7740.00				
March 1,1941.	40521.88			121043.43	150000.00		40521.88☆	
		CREDIT						
				5175.74				
March 3,1941.	45697.62			5175.74			45697.62☆	
		IRVING TRUST Co.						
				146400.00				
		CREDIT 3/1		100.00				
		IRVING TRUST Co.		10000.00				
				50000.00				
				96512.84				
				19997.50				
		CREDIT		10000.00				
989		GUARANTY TRUST COMPANY *****		8016.00				
					350000.00			
		CREDIT		261.28				
March 4,1941.	36985.32			341287.70	350000.00		36985.32☆	
		IRVING TRUST Co.						
				25000.00				
				39187.79				
				762.04				
990		GUARANTY TRUST COMPANY *****		5870.97	150000.00			
		CREDIT		100000.00				
				170820.76	150000.00		57806.08☆	

Exhibit A-3

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137 **Exhibit A-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

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TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC	IMP
RES	CONT
CASH	ACCT
EXP.	BOND
RECEIVED BY	

Made in Japan

To OSAKA

Disp'd FEB 25TH A.M. P.M.

CABLE CHARGES $ 14.41 A/C IRVING TRUST CO

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF YOURSELVES
BY ORDER OF BANQUE MELLIE IRAN
TEHERAN
$3200.00 RE. CREDIT 12/5
$1100.00 RE.CREDIT 12/5
$ 650.00 RE.CREDIT 12/5
AS YOUR T.T. BOUGHT
WIRE IF OBJECTIONABLE

THE YOKOHAMA SPECIE BANK, LTD. MAR 14 PAYMENT NEW YORK AGENCY

$ 110.27

In Tmpte. 7c in 1/64, Dealer instructed not to treat $ 607.50 but that this not mention here to disposal of the difference of $ 425.00 In T # 76 2/6/41

Exhibit A-2

M 15 — Tel Aviv [redacted]

No. 40 Osaka Made in Japan

DATE	NUMBER	REMARKS		DR	CK MARK	CR.	Dr or Cr	BALANCE
				747096278		333899089	Dr	413282989
Feb 20	21		NOT			33329		
	145		SPAIR			105777		
	146		"			609660	"	412156473
21	2733-842		4/0	78084350				
	7867-963		NC 4/0	112109				
	360		NC 4/0			2300		
	488		NC 4/0			23500		
	22		NC T			77969	"	489555163
24	26		T.P.	9908				
	Sp. 13		T.R.	Value 1/28/41		38126		
	Sp 41	Shanghai	I.B.			193331		
	L 160/192	skipped L 170-171. L 184	B.R.			1670497		
	4201-3, 4219		"			1666886		
	4196-200, 4203-18, 4220-32		"			12621701		
	23		T.			50000	"	473325531
25	10	S J	CC	9000000		Value 2/24/41		
	11	La	"	4500000		" "		
	12	Seattle	"	4500000		" "		
	27		IIP	4683				
	1	Samra Bk	B.R.			465920	"	490906594
2 2641	6601	Yodori	E.C.			17200000		
	6532		C.N	654373				
	9666-7,9682-92		B.P.	7684.7				
	147	/ /	Sp T R	/		129636		
	25-7		T.R.			49500	"	472696449
27	3118-9		D.N.			731		
	Sp. 148		T R			137457		
	28		T.P.	319736				
	Sp. 10		T.P.	35156				
	Sp. 11		T.P.	233220				
	6483	Yodori	E.C.			17200000		
	6462	"	"			40000000		
	6685	"	"			8200000	"	407796371
				944608960		436922589		

Exhibit A-4

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Exhibit A-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

143

(See opposite ☞)

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Exhibit A-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

149

(See opposite ☞)

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154

Exhibit B-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

155

(See opposite ☞)

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TRANSFER VOUCHER

THE YOKOHAMA SPECIE BANK, LTD., New York

MAR 4 - 1941

Misc. 13h 10M-39. Made in U.S.A.

TAKAHASHI — CARMODY

Inter-Office A/C			Current % With Bankers		
		Their A/C			
7	000 —	Lexington TR 118	Chase NB Credit	7	000 —
		Chase NB	Current % With Bankers		
4	165 —	Osaka TR 32	Irving Trust Co Credit	5	870 97
	255 97	" 33	Current % With Bankers		
1	450 —	" 34	Natl City Bk Credit		883 10
		Irv. Trst	" "	22	195 70
	883 10	Tientsin TR 506	" "	9	003 61
22	195 70	" 6			
9	003 61	" 7			
		HCB			

Cash paid by us — Total 44 953 38

246

Cash received by us — Total 44 953 38

Exhibit I-1

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Exhibit B-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

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(See opposite ☞)

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Specie Bank
NEW YORK

CAbn
EXP. | BOND.
RECEIVED BY

To OSAKA

dest'd MAR 4TH. A.M. P.M.

CABLE CHARGES $ 11.10 A/C IRVING TRUST CO

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF YOURSELVES
BY ORDER OF BANQUE MELLIE IRAN.
TEHERAN
$4165.00 CREDIT 12/5624
$255.97 CREDIT 12/5633
$1450.00 CREDIT 12/3632
AS YOUR T.T. BOUGHT
WIRE IF OBJECTIONABLE

1,451 like 8.45 [illegible]

Unknown value
9/29 of
Refund #

NO.52

THE YOKOHAMA SPECIE BANK, LTD.
RECEIVED
PAYMENT
NEW YORK

Exhibit B-2

P. 6)

TRANSFER VOUCHER

F. SAKAHIRO

THE YOKOHAMA SPECIE BANK, LTD. New York

APR 9 - 1941

F. Kezras

Inter-Office A/C

Their A/C

Current A/c With Bankers

Drawing for Credit

A. BUNKE

1739 53 Tokio TTR 97

1739 53

Cash paid by us

Total

168

Cash received by us

Total

Misc. 170

Made in Japan

Exhibit C-1

166

Exhibit B-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

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(See opposite ☞)

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CASH RECORD

IRVING TRUST COMPANY

BANK CHECK NUMBER	OLD BALANCE	REMARKS	DATE	AMOUNT DEBIT	AMOUNT CREDIT	CHECKS PAID	SHEETS NO NEW BALANCE	SHEETS NO BANK
		IRVING TRUST COMPANY						
FEB. 24,1941.	51199.70	CREDIT 2/18						
				28457.48				
				2141.25				
				2526.18				
				3472.19				
				36597.08			87796.78	
FEB. 25,1941.	87796.78							
		CREDIT 2/21						
986		GUARANTY TRUST COMPANY						
		IRVING TRUST COMPANY						
		CREDIT						
				5.06				
				237139.95	300000.00			
				432.14				
				5040.00				
				242617.15	300000.00		30413.93	
FEB. 26,1941.	30413.93							
		IRVING TRUST COMPANY						
		CREDIT						
				50000.00				
				15000.00				
				25652.23				
				25000.00				
				4950.00				
				120582.23			150996.16	
FEB. 27,1941.	150996.16							
		IRVING TRUST CO.						
				100023.94				
				10000.00				
				5363.33				
				40000.00				
987		GUARANTY TRUST COMPANY			250000.00			
		CREDIT		13095.02				
				168482.29	250000.00		69479.45	
FEB. 28,1941.	69479.45							
		IRVING TRUST COMPANY						
				20000.00				
				12933.33				
				15000.00				
				65370.10				
988		GUARANTY TRUST COMPANY			150000.00			
		CREDIT		7740.00				
				121043.43	150000.00		40521.88	
MARCH 1,1941.	40521.88							
		CREDIT		5175.74				
				5175.74			45697.62	
MARCH 3,1941.	45697.62							
		IRVING TRUST CO.						
		CREDIT 3/1						
		IRVING TRUST CO.						
				146400.00				
				133.00				
				10000.00				
				50000.00				
				96512.84				
				19997.50				
				10000.00				
				8016.08				
989		GUARANTY TRUST COMPANY			350000.00			
		CREDIT		261.28				
				541297.70	350000.00		36985.32	
MARCH 4,1941.	36985.32							
		IRVING TRUST CO.						
				25000.00				
				39187.75				
				762.04				
990		GUARANTY TRUST COMPANY			150000.00			
		CREDIT		5870.97				
				100000.00				
				170820.76	150000.00		57806.08	

Exhibit B-3

184

Exhibit C-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

185

(See opposite ☞)

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Exhibit B-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

173

(See opposite ☞)

174

No. 5a — Osaka — Made in Japan

NO	NUMBER	REMARKS	DR	CR MARK	CR	Dr or Cr	BALANCE
			935881764		511468918	Dr.	424432766
3	41 27			SETTLED	1652800		
	32-34			TR	587097	"	422182869
5	39		T.P. 3820250	SETTLED			
	40-41		" 268750	SETTLED			
	35-6		TR.	SETTLED	750000		
	37		"	SETTLED	607500		
	4233-43		BR	SETTLED	873097		
	L 193-215		"	SETTLED	1197980	"	422843292
6	6912	Fodor	E.C.	SETTLED	1300000		
	2	Sanwa Bank	TP. 799500	SETTLED			
	2897-909		I.B. 15004209	SETTLED			
	8061-89	"	H.C.DN 1289444	SETTLED			
	1899-901		B.R.	SETTLED	5444		
	Gp. 149		TR.	SETTLED	642380	"	436828121
7	42		TP 26000	SETTLED			
	43		" 1198282	SETTLED			
	485-7		NCR	SETTLED	2263		
	H1634	Refunded	BR 62000	SETTLED			
	9717-26		BP 84462	SETTLED		•	448980122
8	38		TR	SETTLED	1455000	•	447525122
10	44		TP 306277	SETTLED			
	2	Sanwa Bk	BR	SETTLED	40014		
	L 216/78		"	SETTLED	4106147		
	4244/88			SETTLED	6386635		
	5403		BP 11635	SETTLED		•	437310238

					1197980	"	422843292
6	6912	Fodor	E.C.	SETTLED	1300000		
	2	Sanwa Bank	TP. 799500	SETTLED			
	2897-909		I.B. 15004209	SETTLED			
	8061-89		H.C.DN 1289444	SETTLED			
	1899-901		B.R.	SETTLED	5444		
	Gp. 149		TR.	SETTLED	642380	"	436828121
7	42		TP 26000	SETTLED			
	43		" 1198282	SETTLED			
	485-7		NCR	SETTLED	2263		
	H1634	Refunded	BR 62000	SETTLED			
	9717-26		BP 84462	SETTLED		•	448980122
8	38		TR	SETTLED	1455000	•	447525122
10	44		TP 306277	SETTLED			
	2	Sanwa Bk	BR	SETTLED	40014		
	L 216/78		"	SETTLED	4106147		
	4244/88			SETTLED	6386635		
	5403		BP 11635	SETTLED		•	437310238

11	7241	Refunded	BR 11738				
	6534/36		CW 121815	SETTLED			
	9726/34		BP 123764	SETTLED		"	437567555
12	46-7		TP. 38000	SETTLED			
	45		" 5432270	SETTLED			
	50	S'hai	B.B 287500	SETTLED			
	1-4	Manila	"	SETTLED	4459553		
	1	Bangkok	"	SETTLED	40277	"	433936493
			969501670		535565177		

Exhibit B-4

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC		IMP	
RES		CONT	
CASH		ACCT	
EXP		BOND	
RECEIVED BY			

To TOKIO

desp'd APR 9TH A.M. P.M.

CABLE CHARGES $ 7.14 A/C IRVING TRUST CO

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF YOUR[illegible]
BY ORDER OF BANQUE [illegible]
TEHERAN
$1739.53 CREDIT 13/7032
AS YOUR T.T. BOUGHT
WIRE IF OBJECTIONABLE

THE YOKOHAMA SPECIE BANK, LTD. RECEIVED APR 15 1942 PAYMENT NEW YORK AGENCY

NO.29

Exhibit C-2

178

Exhibit C-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

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(See opposite ☞)

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190

Exhibit C-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's

191 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

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(P.65 - Top)

CASH RECORD

IRVING TRUST COMPANY

APR 2 - 1941

DATE

SHEETS NO.

BANK CHECK NUMBER	OLD BALANCE	REMARKS	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	BANK
APRIL 2,1941.	61258.88						
		Irving Trust Co.					
		Credit " 3/14					
			25000.00 ✓				
			378.00 ✓				
			9203.96 ✓				
			34581.96			95840.54☆	
APRIL 3,1941.	95840.54						
		Irving Trust Co.					
		" " "					
			25000.00 ✓				
			39240.39 ✓				
1011		GUARANTY TRUST COMPANY *****					
		Credit					
		"					
		"					
			30000.00 ✓	100000.00 ✓			
			12000.00 ✓				
			1000.00 ✓				
APRIL 4,1941.	123080.93		127240.39	100000.00		123080.93☆	
		Irving Trust Co.					
		" " "					
		" " "					
		" " "					
1012		GUARANTY TRUST COMPANY *****					
			10315.35 ✓				
			31000.00 ✓				
			105597.74 ✓				
			127892.22 ✓				
				•300000.00 ✓			
APRIL 5,1941.	97886.24		274805.31 ✓	300000.00		97886.24☆	
		Irving Trust Co.					
		" " "					
1013		GUARANTY TRUST COMPANY *****					
			27362.23 ✓				
			46408.89 ✓				
				•100000.00 ✓			
		Credit					
		"					
			188.50 ✓				
			5000.00 ✓				
APRIL 7.1941.	76845.86		78959.62 ✓	100000.00		76845.86☆	
		Irv "	262480.21 ✓				
1014 1015		xGuarantyxTrustxCompanyx***** GUARANTY TRUST COMPANY *****					
		Credit					
				300000.00			
			9829.16 ✓				
APRIL 8,1941.	49155.23		272309.37	300000.00		49155.23☆	
		Irving Trust Co.					
		" " "					
			35455.50 ✓				
			15058.61 ✓				
			50514.11 ✓				
APRIL 9,1941.	99669.34					99669.34☆	
		Irv in Co					
		" "					
		" "					
		" "					
		Credit 3, 13					
			11112.00 ✓				
			45000.00 ✓				
			78586.73 ✓				
			28149.65 ✓				
			3.18 ✓				

(P. 45 - Top)

CASH RECORD

IRVING TRUST COMPANY

APR 2 - 1941

BANK CHECK NUMBER	OLD BALANCE	REMARKS	DATE	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	BANK
1013		GUARANTY TRUST COMPANY *****			100000.00			
		CREDIT			188.50			
		"			5000.00			
APRIL 7.1941.	76845.86				78959.62			
		Irv "			262480.21	100000.00	76845.86	
1015		GUARANTY TRUST COMPANY. *****			300000.00			
		CREDIT			9829.10			
APRIL 8,1941.	49155.23				272309.37	300000.00	49155.23	
		IRVING TRUST CO.			35455.50			
		" " "			15058.61			
					50514.11		99669.34	
APRIL 9,1941.	99669.34							
		IRV TR CO			11112.00			
		" "			45000.00			
		" "			78586.73			
		" "			28149.65			
		CREDIT 3,13			3.18			
		"			1739.53			
1016		GUARANTY TRUST COMPANY, CANTON A/C *****			200000.00			
					164591.09	200000.00	64260.43	
APRIL 10,1941.	64260.43							
		IRVING TRUST CO.			24148.82			
		" " "			28668.62			
1017		GUARANTY TRUST COMPANY *****			*100000.00			
					52817.44	100000.00	17077.87	

(P. 47 - Lower)

Exhibit C-3

196

Exhibit C-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

197

(See opposite ☞)

198

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC	IMP
RES.	CONT.
CASH.	ACCT.
EXP.	BOND
RECEIVED BY	

To NAGOYA

desp'd APR 17TH A.M. / P.M.

CABLE CHARGES $ 8.02 A/C IRVING TRUST CO

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF YOURSELVES
BY ORDER OF BANQUE MELLIE IRAN
TEHERAN
$35.132.57 CREDIT 12/2439
AS YOUR T.T. BOUGHT
WIRE IF OBJECTIONABLE

THE YOKOHAMA SPECIE BANK, LTD.
RECEIVED
APR 30 1941
PAYMENT
NEW YORK AGENCY

NO. 55

Exhibit D-2

(P-67) 176

No. 9F Tokio

DATE	NUMBER	REMARKS		DR	CK. MARK	CR	Dr. or Cr	BALANCE
				D152624339		M720P51970	Cr.	2568227631
4 8 44	K655		ITP	19400	SETTLED			
	K656		"	7612	SETTLED			
	K657		"	21093	SETTLED			
	6976		BP	13900	SETTLED			
	K658		ITT	377771	SETTLED			
	K659		"	38753	SETTLED			
	332		HC IT		SETTLED	5000		
	331		"		SETTLED	13566750		
	333		"		SETTLED	96262		
	334		"		SETTLED	56205000	"	2587037222
9	1372	Macao	BR		SETTLED	10000		
	7123	Todos	EC	Value 4/10	SETTLED	126000000		
	97		ITR		SETTLED	173953	x	
	98		"		SETTLED	8486		
	335		HC IT		SETTLED	115719		
	336		"		SETTLED	260000		
	337		"		SETTLED	2250000		
	338		"		SETTLED	246361		
	339		"		SETTLED	418796		
	340		"		SETTLED	875974		
	341		"		SETTLED	3000000		
	342		"		SETTLED	260500		
	1	Peking	IT		SETTLED	616767		
	1	Tsingtao	BP		SETTLED	8766334		
	3	Singapore	IT	281250	SETTLED			
	1	Harbin	BP	364663	SETTLED			
	K658		ITT	377771	SETTLED			
	K659		"	38753	SETTLED			
	332		HC IT		SETTLED	5000		
	331		"		SETTLED	13566750		
	333		"		SETTLED	96262		
	334		"		SETTLED	56205000	"	2587037222
9	1372	Macao	BR		SETTLED	10000		
	7123	Todos	EC	Value 4/10	SETTLED	126000000		
	97		ITR		SETTLED	173953	x	
	98		"		SETTLED	8486		
	335		HC IT		SETTLED	115719		
	336		"		SETTLED	260000		
	337		"		SETTLED	2250000		
	338		"		SETTLED	246361		
	339		"		SETTLED	418796		
	340		"		SETTLED	875974		
	341		"		SETTLED	3000000		
	342		"		SETTLED	260500		
	1	Peking	IT		SETTLED	616767		
	1	Tsingtao	BP		SETTLED	8766334		
	3	Singapore	IT	281250	SETTLED			
	1	Harbin	BP	364663	SETTLED			
6202		Cancelled	LC	2142994		Value 2/1		
	2	Kobe	ITP	37821	SETTLED			
	K9		"	37876	SETTLED			
	6-8		"	68660	SETTLED			
59, 319		Mar #59	BP	6845				
	318		ITP	8830600	SETTLED			
	K660		"	21093				
				2164879060		8822193946		7173408834

Exhibit C-4

214

Exhibit D-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

215

(See opposite ☞)

216

202

Exhibit D-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

203

(See opposite ☞)

204

(P.73)

CASH RECORD

IRVING TRUST COMPANY — DATE APR 11 1941 — SHEETS NO.

BANK CHECK NUMBER	OLD BALANCE	REMARKS	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	BANK
PRIL 11,1941.	17077.87						
		IRVING TRUST CO.	74513.33				
			19608.98				
			10827.08				
			5032.50				
		CREDIT	109981.89			127059.76	
APRIL 12,1941.	127059.76						
		IRVING TRUST CO.	24574.16				
			3584.60				
1018		GUARANTY TRUST COMPANY *****	28158.76	*100000.00			
				100000.00		55218.52	
APRIL 14,1941.	55218.52						
		IRVING TRUST COMPANY	14423.41				
			17422.11				
			55124.91				
			100000.00				
			29000.00				
1019		GUARANTY TRUST COMPANY *****	215970.43	*200000.00			
				200000.00		71188.95	
APRIL 15,1941.	71188.95						
		IRVING TRUST CO.	19755.28				
			13713.52				
			18000.00				
			20136.11				
			16208.72				
			10000.00				
		CREDIT	21300.00				
1020		GUARANTY TRUST COMPANY ****		*100000.00			
		CREDIT	426.75				
			[illegible]	[illegible]		[illegible]	
		CREDIT	10242.00				
			129782.38	100000.00		100971.33	
APRIL 16,1941.	100971.33						
		IRVING TRUST CO.	18503.83				
			15000.00				
			102943.85				
1021		GUARANTY TRUST COMPANY *****	136449.38	*150000.00			
				150000.00		87420.71	
APRIL 17,1941.	87420.71						
1022		GUARANTY TRUST COMPANY *****					
		CREDIT	95135.57	*100000.00			
			[illegible]	[illegible]		[illegible]	
		CREDIT	3200.00				
			98335.57	100000.00		85756.28	
APRIL 18,1941.	85756.28						
		IRVING TRUST CO.	25185.25				
			30953.87				
			50000.00				
		CREDIT					
1023		GUARANTY TRUST COMPANY *****	106139.12	*100000.00			
				100000.00		91895.40	

Exhibit D-3

(P. 69)

TRANSFER VOUCHER

THE YOKOHAMA SPECIE BANK, LTD., New York.

In TAKAHIRO F. Kearns

APR 17 1941

Inter-Office A/C Current % With Bankers & Bunce

Their A/C Irving Trust Credit 95 135 57

95 135 57 Nagoya TR 16

Cash paid by us

Total

146

Cash received by us

Total

Misc. 17½

Made in Japan

5

Exhibit D-1

208

Exhibit D-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

209

(See opposite ☞)

210

220

Exhibit D-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

221

(See opposite ☞)

222

(₱.75)

No. 8B Nagoya

DATE	NUMBER	REMARKS		DR	CR MARK	CR	BALANCE
				12098346		110800804	1181342
4 17 44	₱ 55		TK	Value 4/16	SETTLED	31444	
	16		"			151353	5636441
18	111-4		HCCN		SETTLED	2464	
	2904		BP	1272	SETTLED		
	1144-52		HCDN	6072	SETTLED		
	95	Cancelled	BR	14000	SETTLED		5644 43
19	3434	Todaki	LC	2600000	SETTLED		
	C407-8		BR		SETTLED	146233	
	3056-65		"		SETTLED	1544147	
	207	Cancelled	"	33450	SETTLED		
	93	"	"	34356	SETTLED		
	7510	"	"	124219	SETTLED		
	272	"	"	62000	SETTLED		

No. 8C Nagoya

DATE	NUMBER	REMARKS		DR	CR MARK	CR	BALANCE
	7505	Cancelled	BR	18400	SETTLED		
	236	"	"	66450	SETTLED		
	271	"	"	63600	SETTLED		
	7322	204.34	"	30720	SETTLED		
	7319	3.11	"	20434			6753670
21	6		TP	31344	SETTLED		
	2201		KP		SETTLED	8057 "	6976963
23	7230	Cancelled	"	35817	SETTLED	"	7012780
24	7		TP	134868	SETTLED		
	1153-67		HCDN	64455	SETTLED	"	7222083
25	115		HCCN		SETTLED	3862	
	1364-5		IB	2046000	SETTLED		
	5462	Todaki	EC	1500000	SETTLED	"	10764231
26	8		TP	9333	SETTLED	"	10773564
				132884952		122111388	

No. 8C Nagoya

DATE	NUMBER	REMARKS		DR	CR MARK	CR	BALANCE
	3056-65		"		SETTLED	1544147	
	207	Cancelled	"	33450	SETTLED		
	93	"	"	34356	SETTLED		
	7510	"	"	124219	SETTLED		
	272	"	"	62000	SETTLED		

Exhibit D-4

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC	IMP.
RES	CONT.
CASH	ACCT.
EXP	BOND
RECEIVED BY	

Made in Japan

To TOKIO

despd MAY 21ST A.M. P.M.

CABLE CHARGES $ 6.25 A/C IRVING TRUST CO

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF BANQUE MELLIE IRAN
TEHERAN CREDIT 13/7156
$1900.00
AS YOUR T.T. BOUGHT
WIRE IF OBJECTIONABLE

cc

THE YOKOHAMA SPECIE BANK, LTD.
RECEIVED
JUN 3 1941
PAYMENT
NEW YORK AGENCY

NO. 30

Exhibit E-2

226

Exhibit E-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

227

(See opposite ☞)

228

(P.77)

TRANSFER VOUCHER

THE YOKOHAMA SPECIE BANK, LTD. New York,

MAY 21 1941 F. Kearns

			Inter-Office A/C Their A/C	Current % With Bankers IRVING TRUST CO.	A. DUPLEX	
	1	900 —	Tokio TR 131	"	1	900 —
	30	400 —	Shanghai " 244	Credits	30	400 —
		7 —				1 —
	32	300 —	Cash paid by us Total	188	Cash received by us Total	32 300 —

Mfrs. 270 Made in Japan

Exhibit E-1

238

Exhibit E-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

239

(See opposite ☞)

240

232

Exhibit E-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

233

(See opposite ☞)

234

(P. 85)

TRANSFER VOUCHER

THE YOKOHAMA SPECIE BANK, LTD. TAKAHASHI New York

MAY 28 1941

F. Kearns

Inter-Office A/C

Their A/C

Current % With Bankers

H. CARMODY

24 876 87 Kaiyen TR 13 ✓
200 Osaka " 75 ✓

Drawing Tr/Cr. Credit 24 876 87
200

Cash paid by us

Total 25 076 87

Cash received by us

Total 25 076 87

Misc. 170

145

Made in Japan

7

Exhibit F-1

CASH RECORD

IRVING TRUST COMPANY

MAY 21 1941

DATE

SHEETS NO

BANK CHECK NUMBER	OLD BALANCE	REMARKS	DEBIT	CREDIT	NEW BALANCE	BANK
May 21,1941.	87163.04					
		Irving Trust Co.		46481.26		
		Irving Trust Co.		54231.12		
		Irving Trust Co.		70000.00		
		Irving Trust Co.		25043.61		
1043		GUARANTY TRUST COMPANY		*200000.00		
		CREDIT		25000.00		
		CREDIT		1900.00		
				3040.00		
				253055.99	200000.00	140219.03
May. 22.1941.	140219.03	Irv Tr Co		41425.94		
		" "		61222.12		
		" "		33000.00		
		CREDIT		22282.30		
		"		2375.00		
1044		GUARANTY TRUST CO P.M.		*300000.00		
		CREDIT		33000.00		
				10500.00		
				203805.36	300000.00	44024.39☆
MAY 23,1941.	44024.39	Irving Trust Co.		113701.57		
		" " "		23893.71		
		" " "		6638.90		
1045		GUARANTY TRUST COMPANY		*100000.00		
		CREDIT		377.57		
MAY. 24.1941.	88636.14			144611.75	100000.00	88636.14☆
		Irv Tr Co		13520.92		
		CREDIT				
				25000.00		
				38520.92		127157.06☆
MAY 26,1941.	127157.06	IRVING TRUST COMPANY		19865.37		
		CREDIT		3322.50		
		"		672.00		
				8736.00		
				32595.87		159752.93☆
MAY. 27.1941.	159752.93	Irv Tr Co		20809.29		
		" "		19042.67		
		" "		124854.59		
		" "		65624.35		
1046		CREDIT GUARANTY TRUST COMPANY		8275.00	300000.00	
				238605.90	300000.00	98358.83☆
MAY 28,1941.	98358.83	Irving Trust Co.		44998.48		
		Irving Trust Co.		11548.37		
				56546.89		154905.68☆
MAY 29,1941.	154905.68	Irving Tr. Co.		30951.80		
		" " "		141664.83		

Exhibit E-3

244

Exhibit E-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

245

(See opposite ☞)

246

256

Exhibit F-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's
257 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

258

(P. 60)

No 136 Tokyo

Name in Japan

DATE	NUMBER	REMARKS		DR	CR MARK	CR	Dr or Cr	BALANCE
May 21				16154387305		B538788439	Cr.	338444134
	7704	Tokyo	C/C Tokyo 6/12		SETTLED	107000.00		
	7643	"	" " 5/6		SETTLED	2732300		
	7633	"	" " 5/5		SETTLED	1200000		
	7682	"	" "		SETTLED	3000000		
	355-6		Dn		SETTLED	263319		
	469	Ottawa	BP	438	SETTLED			
	K3fol 66	Wash	"	932780	SETTLED			
	K7V3-30	Chicago	"	110642	SETTLED			
	Sunday	Acc # 366		539597	SETTLED			
	430		MP	1727	SETTLED			
	429		"	1100000	SETTLED			
	428		"	500000	SETTLED			
	84		4MP	954000	SETTLED			
	K1054		M	4714	SETTLED			
	5		"	18549	SETTLED			
	6		"	101953	SETTLED			
	7		"	8491	SETTLED			
	8		"	1076	SETTLED			
	9		"	109837	SETTLED			
	60		"	25962	SETTLED			
	1		"	64694	SETTLED			
	1190	Add to Cf 3/3	Zurich BP	115 00 08	SETTLED			
	301-2		DN			375000		
	447		HCR		SETTLED	10000000		
	448		"		SETTLED	4944500		
	129		"R		SETTLED	25000000		
	130		"		SETTLED	10000000		
	131		"		SETTLED	190000		
	4p2	Main	"		SETTLED	183378		
	4p61		"		SETTLED	123383		
	4p60		"		SETTLED	2274644	"	349541010
	7693	Tokyo	C/C		SETTLED	3000000		
22	85		4MP	4000000	SETTLED		"	352054010
				45175927773		11694468783		

Exhibit E-4

250

Exhibit F-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's 251 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

252

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC	IMP
RES	CONT
CASH	ACCT
EXP	BOND
RECEIVED BY	

To OSAKA

desp'd MAY 29TH A.M. P.M.

CABLE CHARGES $ 5.82 A/C IRVING TRUST CO

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF BANQUE MELLIE IRAN
TEHERAN
CREDIT 12/5614
$200.00
AS YOUR T.T. BOUGHT
WIRE IF OBJECTION TO PAYMENT

THE YOKOHAMA SPECIE BANK, LTD.
RECEIVED
MAY 17 1941
NEW YORK AGENCY

NO. 24

Exhibit F-2

262

Exhibit F-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's
263 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

264

TRANSFER VOUCHER

THE YOKOHAMA SPECIE BANK, LTD., New York JUN 2 - 1941

Inter-Office A/C Current A/c With Bankers

Their A/C

1 2 52 50
50 50

Cash paid by us

Total 1 8 60 —

IRVING TRUST CO.

250

Cash received by us

Total 1 8 60 —

Made in Japan

Exhibit G-1

(p.89)

CASH RECORD

IRVING TRUST COMPANY

DATE MAY 29 1941 SHEETS NO.

BANK CHECK NUMBER	OLD BALANCE	REMARKS	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	BANK
MAY 29, 1941.							
		CREDIT					
		"					
1047		GUARANTY TRUST COMPANY. *****					
		~~CREDIT~~					
			24876.87				
			200.00				
				$300000.00			
			~~197693.50~~	~~300000.00~~		~~52599.18~~	
			197693.50	300000.00		52599.18☆	
MAY 31, 1941.	52599.18						
		IRVING TRUST CO.					
		" " "					
			112185.22				
			112185.22			164784.40	
JUNE 2, 1941.	164784.40						
		IRVING TRUST CO.					
		CREDIT					
		"					
1048		GUARANTY TRUST CO. COUPON A/C					
1049		GUARANTY TRUST COMPANY *****					
		CREDIT					
			129959.47				
			1860.00				
				*100000.00			
			1783.30	*100000.00			
			133602.77	200000.00		98387.17☆	
JUNE 3, 1941.	98387.17						
		CREDIT 5/24					
		IRVING TRUST COMPANY					
		" " "					
		" " "					
			16.38				
			108156.49				
			30379.80				
			200000.00				
1050		NATIONAL CITY BANK *****					
		IRVING TRUST COMPANY					
				*400000.00			
			16000.00				
			354552.67	400000.00		52939.84☆	
JUNE 4, 1941.	52939.84						
		IRVING TRUST CO.					
		" " "					
		" " "					
			54931.20				
			17960.44				
			20000.00				
			92891.64			145831.48☆	
JUNE 5, 1941.	145831.48						
		IRVING TRUST CO.					
		" " "					
		" " "					
			22423.60				
			52926.36				
			10901.64				
1051		GUARANTY TRUST CO. *****					
				*150000.00			
			86251.60	150000.00		82083.08☆	
JUNE 6, 1941.	82083.08						
		IRVING TRUST CO.					
		" " "					
		CREDIT					
		"					
1052		GUARANTY TRUST COMPANY *****					
				*100000.00			
			60472.75				
			33000.00				
			10000.00				
			103472.75	100000.00		85555.83☆	
JUNE 7, 1941	85555.83						
		IRVING TRUST CO.					
		" " "					
		CREDIT " " "					
		"					
		CREDIT					
			130057.50				
			13000.00				
			105696.51				
			50000.00				
			1687.50				
			300441.51			385997.34☆	

Exhibit F-3

268

Exhibit F-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

269

(See opposite ☞)

270

No. 10A Osaka

DATE	NUMBER	REMARKS	DR	CR	BALANCE
			1709241581	1300507863	408733718
	3000	Cancelled BR	111700		
	11470	"	24664		
	10177		43041		
	11072		93646		
	11079		106530		
	11472		90475		
	11077		43424		
	11083		49464		
	11474		49678		
	74856	" BP		4600	
	7632-3	"		4600	
	7902-3	"		4600	
	9688	" "		23440	41025801
29	5	BR		33000	
	4711-23			95444473	
	4801-40			47130422	
	363	HCDD		194118	
	519 39	HCL		346977	
	75	" R		20000	
	76	"		20490	
	390	Cancelled BR	23777		
	395	" "	152920		
	432	" "	67127		
	433	" "	314377		
	434	" "	28475		
	439	" "	186726		
	483	" "	232493		
	10375	" "	13379		
	2458	" "	44604		
	10833	" "	21200		
	10347	" "	34131		
	10373	" "	31483		
	10374	" "	42846		405582267
			1711999600	1306417333	

3000 Cancelled BR 111700
11470 " 24664
10177 43041
11072 93646
11079 106530
11472 90475
11077 43424
11083 49464
11474 49678
74856 " BP 4600
7632-3 " 4600
7902-3 " 4600
9688 " " 23440 41025801
29 5 BR 33000
4711-23 95444473
4801-40 47130422
363 HCDD 194118
519 39 HCL 346977
75 " R 20000
76 " 20490
390 Cancelled BR 23777
395 " " 152920
432 " " 67127
433 " " 314377
434 " " 28475
439 " " 186726
483 " " 232493
10375 " " 13379
2458 " " 44604
10833 " " 21200
10347 " " 34131
10373 " " 31483
10374 " " 42846 405582267
1711999600 1306417333

Exhibit F-4

274

Exhibit G-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

275

(See opposite ☞)

276

280

Exhibit G-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's 281 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

282

513 528

RECORD

P.95-108

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC.		IMP.	
REG.		CONT.	.0
CASH.		ACCT.	
EXP.		BOND	
RECEIVED BY			

Made in Japan

To TOKAC

desp'd JUNE 2ND A.M. P.M.

CABLE CHARGES $ 8.90 A/C IRVING TRUST CO

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF BANQUE MELLIE IRAN.TEHERAN
$1252.50 CREDIT 13/7157
$ 607.50 " 13/7158
AS YOUR T.T.BOUGHT
WIRE IF OBJECTIONABLE

THE YOKOHAMA SPECIE BANK LTD.
RECEIVED
JUN 18 1941
PAYMENT
NEW YORK AGENCY

10.44

Exhibit G-2

286

Exhibit G-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

287

(See opposite ☞)

288

(p.97)

CASH RECORD

IRVING TRUST COMPANY

DATE MAY 29 1941 SHEETS NO

BANK CHECK NUMBER	OLD BALANCE	REMARKS	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	BANK
MAY 29,1941.		CREDIT					
			24876.87				
			200.00				
1047		GUARANTY TRUST COMPANY *****		$300000.00			
			197693.50	300000.00		52599.18	
MAY 31,1941.	52599.18						
			112185.22				
			112185.22			164784.40	
JUNE 2,1941.	164784.40	IRVING TRUST CO.					
		CREDIT					
1048		GUARANTY TRUST CO. COUPONS, C *****		*100000.00			
1049		GUARANTY TRUST COMPANY *****		*100000.00			
		CREDIT	1783.30				
			133602.77	200000.00		98387.17*	
JUNE 3,1941.	98387.17						
			16.38				
		CREDIT 5/24	103156.49				
		IRVING TRUST COMPANY	30379.80				
			200000.00				
1050		NATIONAL CITY BANK *****					
		IRVING TRUST COMPANY	16000.00	*400000.00			
			354552.67	400000.00		52939.84*	
JUNE 4,1941.	52939.84						
			54931.20				
		IRVING TRUST CO.	17960.44				
			20000.00				
JUNE 5,1941.	145831.48		92891.64			145831.48*	
			22423.60				
		IRVING TRUST CO.	52926.36				
			10901.64				
1051		GUARANTY TRUST CO. *****		*150000.00			
			86251.80	150000.00		82083.08*	
JUNE 6,1941.	82083.08						
		IRVING TRUST CO.	60472.75				
			33000.00				
		CREDIT	10000.00				
1052		GUARANTY TRUST COMPANY *****		*100000.00			
			103472.75	100000.00		80555.83*	
JUNE 7,1941	80555.83						
		IRVING TRUST CO.	130087.50				
			13000.00				
		CREDIT	105696.51				
			50000.00				
		CREDIT	1687.50				
			300441.81				
						385997.34*	

Exhibit G-3

292

Exhibit G-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

293

(See opposite ☞)

294

(P. 99)

220

No. 14D Tokyo

Made in Japan

DATE	NUMBER	REMARKS	DR	CK MARK	CR	Dr or Cr	BALANCE
June 2			149822[illegible]654		87160473 01	Cr.	8234060647
	K1161		TTP 15148				
	2		" 757				
	3		" 9324				
	4		" 1120000				
	5		" 160770				
	474		TCT		1120000		
	140		TTP		195450		
	141		"		607501		
	90		4TOP 9161326 5				
	K25	BQ Auditorium	BP 4000				
	446	Ottawa "	" 04				
	12		4TTP " " "		3[illegible]817	"	87147[illegible]1380
3	7803	Toronto	EC		3500000		
	460		TTP 41900				
	1		" 100000				
	2		" 90000000				
	3		" 3000000				
	4		" 131563[illegible]				
	K1154		" 149882				
	5		" 103834				
	6		" 23854				
	7		" 8519				
	5	Rainy	" 119474				
	6	"	" 71685				
	6360	Montreal	BTT		4712		
	1362	"	"		505855		
	6420-9				5997444		
	Sunday	Sud. Rm. Bk.			5000000		
	6220-9		CK 40000				
	954661		BP 19870				
	K3019-75	[illegible]	" 1059436				
	6993	Montreal	10400				
	262-8		BTT		[illegible]387995	"	4[illegible]4[illegible]4[illegible]28
			14[illegible]488		2[illegible]63[illegible]16		

Exhibit G-4

298

Exhibit H-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

299

(See opposite ☞)

300

No. 11F Nagoya

DATE	NUMBER	REMARKS		DR	CK MARK	CR	Dr or Cr	BALANCE
				17270 8319		17123 1235	Dr	1477084
June 24	6673	Cancelled	CR	260671				
	7612	"	"	426032				
	7613	"	"	526376				
	4	"	"	48890				
	5	"	"	28772				
	6	"	"	27382				
	7618	"	"	56164				
	7619	"	"	21144				
	7621	"	"	47080				
	7627	"	"	11172				
	729	"	"	40243				
	7331	"	"	163856			"	3133866
	6186	Cnl 5/29 Corrected	HCDN	142953				

No. 11G Nagoya

DATE	NUMBER	REMARKS		DR	CK MARK	CR	Dr or Cr	BALANCE
	907		CN	3818	SETTLED			
	290469		BP	127877	SETTLED			
	1	Cnl 5/16 Cancelled	Shai "	1800000				
	641	LA	EC		SETTLED	970146		
	642	Seattle	"		SETTLED	146777		
	640	SF	"		SETTLED	4543748		
	522-31		BR		SETTLED	509428		
	8222-33		"		SETTLED	1112848 Cr		2074443
26	532-6		BR		SETTLED	388872		
	2229		"		SETTLED	90000		
	18		"R			8565 X		
	6129	Fodan	EC	2000000	SETTLED	564737	"	639180
27	130-3		HCCN			242820		
	5778	Fodan	EC	2000000	SETTLED	value 569 Dr		1118000
		Carried Forward to Cnl p 57		180439739		179321739		

Exhibit H-4

(P-161)

TRANSFER VOUCHER

THE YOKOHAMA SPECIE BANK, LTD., New York TAKEUCHI JUN 26 1941 F. Kearns

	Inter-Office A/C	Current a/c With Bankers	
	Their A/C	IRVING TRUST CO.	15 000 —
15 000 —	Shanghai TR 2664	IRVING TRUST CO.	858 65
858 65	Nagoya " 18	Credits	

Cash paid by us		Cash received by us	
15 858 65	Total 238	Total	15 858 65

Made in Japan

Exhibit H-1

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SE	IMP
RES	CONT
CASH	ACCT
EXP	BOND
RECEIVED BY	

To NAGOYA

desp'd JUNE 26TH A.M. P.M.

CABLE CHARGES $ 6.70 AC IRVING TRUST CO

RECEIVED TODAY FROM

IRVING TRUST CO

~~BANKER~~ FOR ACCOUNT OF BANQUE MELLIE IRAN

TEHERAN

CREDIT 12/5489

THE SUM OF $858.65

AS YOUR T.T.BOUGHT

WIRE IF OBJECTIONABLE

THE YOKOHAMA SPECIE BANK, LTD.
RECEIVED
APR 11 1941
PAYMENT
NEW YORK AGENCY

NO. 34

310

Exhibit H-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's

311 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

312

(P. 165)

CASH RECORD

IRVING TRUST COMPANY.

DATE JUN 19 1941 SHEETS NO.

BANK CHECK NUMBER	OLD BALANCE	REMARKS	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	DATE
JUNE. 19.1941.	114262.39	Inv Tr Co " " " " " " " " CREDIT "	25519.68 44428.46 22516.43 48000.00 50000.00 14550.00 20000.00				
1060		IRVING TRUST COMPANY.******		25000.00			
1061		GUARANTY TRUST COMPANY.*****		200000.00			
		CREDIT	525.78 225540.32	225000.00		114802.71*	
JUNE. 20.1941.	114802.71	R RCO " "	31124.27 102919.39				
1062		GUARANTY TRUST COMPANY.******		$150000.00			
JUNE 21,1941.	99246.30		134413.59	150000.00		99246.30*	
		Irving Trust Co. " " " " " " CREDIT	70849.38 123277.03 100000.00 10500.00				
1063		GUARANTY TRUST COMPANY *****		*300000.00			
JUNE 23,1941.	103872.71		304626.41	300000.00		103872.71*	
		Irving Trust Co.	36423.89 36423.89			140296.60*	
JUNE. 24.1941.	140296.60	Irv Tr Co " "	50000.00 49395.43				
1064* 1065		GUARANTY TRUST COMPANY.*****		150000.00			
		CREDIT	5000.00 104395.43	150000.00		94692.03*	
JUNE 25,1941.	94692.03		17894.19 57689.61 75583.80			170275.83*	
		Irving Trust Co. " " "	13386.67 89000.00 16006.00 21958.11				
JUNE 26,1941.	170275.83			*200000.00			
		Irving Trust Company " " " " " " " " "	1568.00 601.50 4080.00 2240.00 15000.00 858.65				
1066		GUARANTY TRUST COMPANY COUPON A/C ****					
		CREDIT	164299.09	200000.00		134574.92*	
		CREDIT					

Exhibit H-3

304

Exhibit H-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

305

(See opposite ☞)

306

316

Exhibit H-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's
317 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

318

322

Exhibit I-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

323

(See opposite ☞)

324

(P.109)

TRANSFER VOUCHER

THE YOKOHAMA SPECIE BANK, LTD., New York, JUL 2 - 1941

F. Keamy

H. CARMODY

Inter-Office A/C

Their A/C

Current % With Bankers

IRVING TRUST CO.

501 55 Tykio TR 3

Credit

501 55

Cash paid by us

Total

Cash received by us

Total

Misc. 170

106

Exhibit I-1

328

Exhibit I-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's
329 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

330

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

REC.	INP
REB	CONT
CASH	ACCT
EXP	BOND
RECEIVED BY	

To TOKIO

desp'd JULY 2ND A.M. P.M.

CABLE CHARGES $ 6,70 A/C IRVING TRUST CO

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF BANQUE MELLIE IRAN
TEHERAN
CREDIT 13/7211
$501.55
AS YOUR T.T. BOUGHT
WIRE IF OBJECTIONABLE

PAID
JUL 18 1961
THE YOKOHAMA SPECIE BANK LIMITED

NO.29

Exhibit I-2

334

Exhibit I-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's
335 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

336

CASH RECORD

IRVING TRUST COMPANY. ••••• DATE JUL 1- 1941 SHEETS NO.

Cashier No. 41 Made in Japan

BANK CHECK NUMBER	OLD BALANCE	REMARKS	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	BANK
JULY. 1.1941.	204969.05						
		IRVING TRUST CO.	16379.25				
		" " "	12000.00				
			28379.25			233349.10☆	
JULY 2,1941.	233349.10						
		IRV TR. CO	45837.40				
			145545.28				
			40055.60				
			6800[illegible].00				
			79[illegible]3.71				
			501.55				
		CREDIT			X		
1070		GUARANTY TRUST COMPANY, COUPON A/C.•••••••		$200000.00			
1071		GUARANTY TRUST COMPANY.•••••	379383.54	$300000.00			
JULY 3,1941.	112732.64			500000.00		112732.64☆	
		IRVING TRUST COMPANY	17037.43				
		" " "	50000.00				
		" " "	31656.49				
		" " "	51079.77				
1072x		GUARANTY x TRUST x COMPANY••••••••••		x$200000.00			
1073		GUARANTY TRUST COMPANY •••••		$200000.00			
			[illegible]	[illegible]		[illegible]	
		CREDIT	5000.00				
			154774.09	200000.00		67506.73☆	
JULY 5,1941.	67506.73						
		CREDIT	12610.00				
			10000.00				
			22610.00			90116.73☆	
		CREDIT	[illegible]	[illegible]		[illegible]	
			5000.00				
			154774.09	200000.00		67506.73☆	
JULY 5,1941.	67506.73						
		CREDIT	12610.00				
			10000.00				
			22610.00			90116.73☆	
JULY 7,1941.	90116.73						
		IRVING TRUST CO.	19751.16				
		CREDIT "	17500.00				
		"	1000.00				
			94.86				
			38346.02			128462.75☆	
JULY 8,1941.	128462.75						
		CREDIT	14850.00				
		IRVING TRUST CO.	11483.97				
		CREDIT	1114.10				
			27148.07			155610.82☆	
JULY 9,1941.	155610.82						
		CREDIT	4899.90				
		IRVING TRUST COMPANY	31520.00				
		" " "	18085.01				
1074		GUARANTY TRUST COMPANY •••••		*150000.00			
			54504.91	150000.00		60115.73☆	
JULY 10,1941.	60115.73						
		IRVING TRUST COMPANY	23186.03				
		" " "	67760.46				
			27257.86				
		CREDIT	2250.00				
			4200.00				
			4900.00				
			129554.35			189670.08☆	

Exhibit I-3

352

Exhibit J-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's
353 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

354

340

Exhibit I-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's
341 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

342

No. 1A Tokio

	DATE	NUMBER	REMARKS		DR.	CK MARK	CR.	Dr or Cr	BALANCE
	July 1						3113387068	Cr	3113387068
		2867	Todaro	EC			2922721		
		2249	"	"	2922721				
		1	Mara	ITP	1054687				
		Sp 1		"	60000000				
		1		"	745115				
		2		"	2000000				
		3		"	10320000				
		4		"	2343750				
		K2		"	68906				
		K3		"	35097				
		K1		"	13900000				
		1		HC "			13900000		
		2		"			225000		
		4		"			163078		
		1	Mara	"			3145247		
		1		" R			15000000		
		3		HC "			21438		
		5		"			5000000		
		6		"			25000000		
		4470-3		BR			2400911		
		363-7	Mara	"			625707		
		1355	"	"			29000		3086489165
2		2		" R			15000000		
		8124	Todaro	EC			20000000		
		Sp 2		" P	25000000				
		371	Cancelled	BR	241388				
		8		HC "			487205		
		Sp 63		" R			139700		
		3		"			50168	X	
		Sp 3		" P	89740588				
		5		"	200000				
		K4		"	58593				
		K5		"	23437				2087688769
					12793771		8210596640		

Exhibit I-4

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC.		IMP.	
RES.		CONT.	
CASH.		ACCT.	
EXP.		BOND	

RECEIVED BY .....

Made in Japan

To TOKIO

desp'd JULY 11TH A.M. P.M.

CABLE CHARGES $ 6.36 A/C IRVING TRUST CO.

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF BANQUE MELLIE IRAN
TEHERAN
CREDIT 13/7225
$500.00
AS YOUR T.T. BOUGHT
WIRE IF OBJECTION-BLE

TEHERAN
CREDIT 13/7225
$500.00
AS YOUR T.T. BOUGHT
WIRE IF OBJECTION-BLE

THE YOKOHAMA SPECIE BANK, LTD. N.Y.C. RECEIVED JUL 24 1941 PAYMENT NEW YORK AGENCY

NO. 38

51

Exhibit J-2

346

Exhibit J-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

347

(See opposite ☞)

348

TRANSFER VOUCHER

THE YOKOHAMA SPECIE BANK, LTD., New York AGENCY JUL 11 1941

			Inter-Office A/C	Current a/c With Bankers	A. BURKE	
			Their A/C	IRVING TRUST CO.		
	662 68	Tientsin T/R 49		IRVING TRUST CO.		662 68
	500 —	Tokio " 9		Credits		500 —

358

Exhibit J-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's

359 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

360

CASH RECORD

IRVING TRUST CO. #X

DATE JUL 11 1941 SHEETS NO

BANK CHECK NUMBER	OLD BALANCE	REMARKS	AMOUNT CREDIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	BANK
JULY 11,1941.	189670.08						
			5136.00				
			2933.94				
			662.68				
			800.00				
			[illegible]			[illegible]	
			7232.63			196902.70	
JULY 12,1941.	196902.70						
		IRVING TRUST CO.	12000.00				
			43435.13				
			55435.13			252337.83	
JULY 14,1941.	252337.83						
		CREDIT	10730.00				
		IRVING TRUST COMPANY	18000.00				
1076		GUARANTY TRUST COMPANY *****	16268.90	*200000.00			
			44998.90	200000.00		97336.73	
JULY 15,1941.	97336.73						
		IRVING TRUST COMPANY	79946.68				
			17341.70				
			19560.07				
		CREDIT	1079.54				
			3000.00				
			120927.99			218264.72	
JULY 16,1941.	218264.72						
		IRVING TRUST COMPANY	51153.57				
			11678.98				
1077		GUARANTY TRUST COMPANY ****	60472.04				
				*200000.00			
		CREDIT	2.75				
			2.75				
		CREDIT	6.79				
			39500.00				
		,,	5000.00				
JULY 17,1941.	186081.51		167816.79	200000.00		186081.51	
		CREDIT	10000.00				
		IRVING TRUST COMPANY	65505.88				
			52208.05				
1078		IRVING TRUST COMPANY	69648.38				
		GUARANTY TRUST COMPANY *****		*200000.00			
		CREDIT	5597.76				
			5686.54				
		CREDIT					
JULY. 19.1941.	194725.70		208644.19	200000.00		194725.70	
		E.J. SULLIGAN. *****	156036.05				
1079		Inv Tr Co	49401.13	8000.00			
		,, ,,	60000.00				
				8400000.00			
1080		GUARANTY TRUST COMPANY. *******					
JULY. 19,1941.	52162.88		265437.18	4080000.00		52162.88	
		Inv Tr Co	100000.00				
		,, ,,	15383.73				
		,, ,,	21188.17				
		,, ,,	316931.70				
		,, ,,	44000.00				
1081		CREDIT	4000.00				
		GUARANTY TRUST COMPANY ******					
			501503.60	[illegible]		153666.48	

Exhibit J-3

TRANSFER VOUCHER

THE YOKOHAMA SPECIE BANK, LTD., New York, JUL 22 1941

R. J. MAH

Inter-Office A/C
Their A/C

4760	—	Tokio T.T. Rate 18	Current % With IRVING TRUST CO. Credit	4760	—

IRVING TRUST CO.

Cash paid by us

Total

Cash received by us

Total

171

Misc. 190

Exhibit K-1

364

Exhibit J-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

365

(See opposite ☞)

366

370

Exhibit K-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

371

(See opposite ☞)



372

376

Exhibit K-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's
377 **Motion and in Opposition to Defendant's Cross-Motion.**

(See opposite ☞)

378

No 16 Tokio

DATE	NUMBER	REMARKS		DR	CK MARK	CR	Dr or Cr	BALANCE
				647082329		3895186527	Cr	3204104198
July 10	Sp 8		"P	5091093				" 3203013105
11	32		"	3500000				
	33		"	2937500				
	K46		"	82000000				
	K47		"	22500				
	K48		"	1810000				
	6563	Federic	EC	10000000				value 6/17
	6564	"	"	40000000				" 6/19
	6562	"	"	600000				" 7/7
	9396	"	"	value 7/8				106172070
	9395	"	"	" "				6100000
	427-8		HeCN					59619
	K3488-3515	Wash	BP	965491				
	374-7		DN					524300
	907-96		BR					364170
	6497-6506		"					774820
	6507-12		"					5842500
	368-9	Mara	"					126828
	1443-7	"	"					42554
	5	Wash	TP	175812				
	Sp 9		"	1269817				
	8		TR					10000000
	9		"					50000
	29		HCN					46957
	30		"					313436
	31		"					2010000 " 3186120438
12	9285	Federic	EC					23800000
	34		TP	52179				
	5		"	6389843				
	6		"	10000000				
	37		"	62726				
	K49		"	130000				
	6-7	Wash	"	121733				" 3193363957
				8252140 23		40 18557980		

Exhibit J-4

No. 2D Tokio

Made in Japan

DATE	NUMBER	REMARKS		DR	CK MARK	CR		BALANCE
				13032 64887		4510833080	Cr	3207568143
July 22	K96		TP	18862		Value 4/8		
	K97		"	51072		" 4/3		
	K98		"	320000		" 4/5		
	K59		"	3351		" 4/6		
	K60		"	3351		" "		
	K99		"	30000		" "		
	K100		"	344929		" 7/2		
	K101		"	58000		" 7/10		
	K105		"	42968		" 6/14		
	K102		"	15175		" 7/11		
	K103		"	8671		" "		
	K104		"	449999		" "		
	K106		"	12095		" 7/14		
	K107		"	16406		" "		
	75		"	100000				
	76		"	200000				
	74		"	20000				
	K108		"	5859				
	9		"	140625				
	K110		"	107561				
	1		"	23789				
	2		"	36127				
	K113		"	2636				
	2	Ba.	"	119475				
	419		"	4500000				
	77		"	10000000				
	17		TR			1000000		
	18		"			476000 X		
	67		HCT			2100000		
	8		"			15000000		
	9		"			1216389		
	70		"			30000000	"	3240679581
				13199458 38		4560625419		

Exhibit K-4

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC.	IMP.
RES.	CONT.
CASH.	ACCT.
EXP.	BOND
RECEIVED BY	

To YOKOHAMA SHOKINGINKO
TOKIO A.M. P.M.

desp'd 7/12

CABLE CHARGES $ 16.66 A/C

272

YOUR TTB RECEIVED IRVING TRUST COMPANY

ACCOUNT BANQUE MELLIE IRAN TEHERAN CREDIT

13/7234 US DOLLARS 4760

ACCOUNT BANQUE MELLIE IRAN TEHERAN CREDIT

13/7234 US DOLLARS 4760

PAID
SEP 25 1941
THE YOKOHAMA SPECIE BANK
LIMITED

4444

Exhibit X-2

394

Exhibit L-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

395

(See opposite ☞)

396

382

Exhibit K-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

383

(See opposite ☞)

384

CASH RECORD

IRVING TRUST COMPANY.●●●●● DATE JUL 21 1941 SHEETS NO.

BANK CHECK NUMBER	OLD BALANCE	REMARKS	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	BANK
JULY. 21.1941.	153666.48						
		Irv T Co " " " " " " " " " "	51219.86 29799.35 218052.99 118139.67 48181.67 25000.00 93762.54				
1082		GUARANTY TRUST COMPANY.●●●●●●		$600000.00			
		CREDIT	30000.00 614156.02	600000.00		167822.50✱	
JULY. 22.1941.	167822.50						
		Irv T Co " " " "	14812.52 35808.80 64948.21				
1083		GUARANTY TRUST COMPANY.●●●●●●		150000.00			
		CREDIT	4760.00 120329.53	1[illegible].00		138152.03✱	
JULY. 23.1941.	138152.03						
		Irv T Co " " " " " " " "	48842.97 223858.87 14966.26 79929.64 11357.78				
1084		E.J. MULLIGAN.●●●●●●		30000.00			
		CREDIT " " " 7/18	7700.00 4897.98 2469.60 254.00				
JULY. 24.1941.	502429.05		394277.02	30000.00		502429.05✱	
1085		E.J. MULLIGAN.●●●●●●		50000.00			
		Irv T Co " " " "	20000.00 373554.22 75743.44				
		" " " 7/18	4897.98 2469.60 254.00				
JULY. 24.1941.	502429.05		394277.02	30000.00		502429.05✱	
1085		E.J. MULLIGAN.●●●●●●		50000.00			
		Irv T Co " " " " " " " " " "	20000.00 373554.22 75743.44 115008.93 71125.48 30726.30 69033.30 3891.63				
1086		GUARANTY TRUST COMPANY .●●●●●●		$1000000.00			
		CREDIT	5000.00 764083.28	10500[illegible].00		216512.33✱	
JULY. 25.1941.	216512.33						
		Irv T Co " " " " " "	30760.28 31914.86 24123.29 252241.53				
1087		E.J. MILLIGAN.●●●●●●		50000.00			
		Irv T Co " " " " " " " " Fed Res Bk Ck Irv T Co " " " "	90018.93 75000.00 90000.00 48073.17 168891.83 15000.00 38484.41 96757.84 41566.25 32374.07 3663.29 19633.61				

Exhibit K-3

TRANSFER VOUCHER

F. Kearns

THE YOKOHAMA SPECIE BANK, LTD., New York

MAR 21 1941

Inter-Office A/C — Current a/c With Bankers

Their A/C Issuing Tokyo Exhibit

3 701 —

3 701 — Osaka TR 40

Cash paid by us

Total

78

Cash received by us

Total

Misc. 170

3

Exhibit L-1

388

Exhibit K-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

389

(See opposite ☞)

390

412

Exhibit L-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

413

(See opposite ☞)

414

5D Osaka

DATE	NUMBER	REMARKS		DR	CK MARK	CR	Dr or Cr	BALANCE
				1048733478		551012174	Dr	497721304
31941	169	Refunded London	B.B	365280				
	92	Sanwa Bk	BP	3632				
	53-4		H.P.	69479				
	52		"	130000				
	55		"	16631				
	30		HC. H.			599682	"	497706644
20	8160-234		HCDN.	1006275				
	56		H.P	53818				
	57		"	79604			"	498846044
21	2980-3074, 3079-95		IB	17629898				
	3103-6		"	2600310				
	496-8		HCCN			19674		
	9747-82		BP	524368				
	65389		CN	13899				
	548	Sanwa Bk	BP	3515				
	9521	Cancelled	"			33700		
	2116 C/26	"	DN.	536				
	40		HR			371100		
	32		HCH			599682		
	31		"			500000		
	1284	Cancelled	BR	10750				
	10723		"	6817				
	9149		"	136000				
	621		"	25570				
	10886		"	218010				
	10885		"	223650				
	10611		"	390937				
	10614		"	7780				
	10568		"	65744				
	10569		"	28184				
	10609		"	7810				
	10576		"	77440				
	10707		"	82124				619345340
				11724818.52		5 31 35012		

400

Exhibit L-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

401

(See opposite ☞)

402

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC.	IMP.
RES	CONT
CASH	ACCT
EXP	BOND
RECEIVED BY	

Made in Japan

To OSAKA

dosp'd MAR 21ST A.M. P.M.

CABLE CHARGES $ 3.55 A/C IRVING TRUST CO

RECEIVED TODAY FROM
IRVING TRUST CO
FOR ACCOUNT OF YOURSELVES
BY ORDER OF BANQUE MELLIE IRAN.TEHERAN
$3701.00 RE. CREDIT 12/5515
AS YOUR T.T.BOUGHT
WIRE IF OBJECTIONABLE

NO.15

FOR ACCOUNT OF YOURSELVES
BY ORDER OF BANQUE MELLIE IRAN.TEHERAN
$3701.00 RE. CREDIT 12/5515
AS YOUR T.T.BOUGHT
WIRE IF OBJECTIONABLE

THE YOKOHAMA SPECIE BANK, LTD.
RECEIVED
APR 8 1941
PAYMENT
NEW YORK AGENCY

47

Exhibit L-2

17

(Exhibit M – Page 1)

REGISTER OF T.T. RECEIVABLE

DATE	No.	APPLICANT	PAYER	Face Amount	Date of Payment	REMARKS
JAN 2 – 1941	X			10694	JAN 2 – 1941	
JAN [illegible] – 1941	2			~~3705~~ Kearns	~~JAN 3 – 1941~~	1/3
JAN [illegible] – 1941	3			7900	JAN 3 – 1941	" 1/8
				15800	JAN 3 – 1941	" "
JAN 17 1941	5			1630	JAN 17 1941	" 1/17
	6		2	1800	JAN 17 1941	" 4
	7		3 "	1300	JAN 1 – 1941	" 1
JAN 20 1941	8	D/P Stockholms Enskilda Bk Stockholm	Natl City Bk	58434 61	JAN 20 1941	1/20
JAN 21 1941	9	Stockholms Enskilda Bk 4C-2+2		5850	JAN 21 1941	1/21
	10		3156	46180	JAN 21 1941	
JAN 24 1941	4	Banque Nationale [illegible] 4C-2/66	Irving Trust	7694	JAN 24 1941	1/24
	2	Union Branch Office 16016	Chase Nat Bk	8570	JAN 24 1941	" "
	3	CANCELLED FEB 8 – 1941		6000	JAN 22 1941	1/22
	4		2351	4700	JAN 27 1941	" "
JAN 30 1941	6		16048	1950	JAN 30 1941	1/30
	7		16049	1780	JAN 30 1941	" "
	17	Banca Nazionale 2 Stati	Chase Nat Bk	7020	JAN 30 1941	1/30
FEB 6 – 1940	8	2 Accs – 1C 85466	Natl City Bk	544976	FEB 6 – 1940	2/6
	19		84649	308830	FEB 6 – 1940	
FEB 7 – 1941	20	Banca Nazionale Roma	Chase Nat Bk	6000	FEB 7 – 1941	" 2/7
FEB 10 1941	2	Banca di Roma, Sede di Roma		63249	FEB 10 1941	" 2/10
FEB 13 1941	22	Israel Discount Bank Ltd	Irving Trust Co	3000	FEB 13 1941	" 2/13
	23	Banca Nazionale	Chase Nat Bk	10000	FEB 13 1941	" "
FEB 19 1941	24	Banque Internationale	Irving Trust	908405	FEB 19 1941	Rd & WL cable 2/19
FEB 26 1941	25	Banque Nationale [illegible]	Irving Trust	3200	FEB 26 1941	" "
	26		12/5627	1100	FEB 26 1941	" "
	27	CANCELLED MAY 6 – 1941		650	FEB 26 1941	
FEB 28 1941	28	1C 6952	Irving Trust	29681	FEB 28 1941	
	29	" 6958		600	FEB 28 1941	" 2/28
	30	" 6959		2100	FEB 28 1941	
MAR 1 – 1941	31	" 12/5629		517574	MAR 1 – 1941	
				12200275		

406

Exhibit L-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

407

(See opposite ☞)

408

CASH RECORD

IRVING TRUST COMPANY

DATE MAR 14 1941

SHEETS NO.

DATE / CHECK NUMBER	OLD BALANCE	REMARKS	AMOUNT DEBIT	AMOUNT CREDIT	CHECK MARK	NEW BALANCE	BANK
March 14, 1941.	34257.36						
		Credit 3/11 Irving Trust Company		45.45			
				250000.00			
998½ 999		GUARANTY TRUST COMPANY			*200000.00		
		Credit		75000.00			
		Credit 3/14			9203.96		
			325045.48	209203.96		150098.82	
March 15, 1941.	150098.82						
		Credit 3/14		39622.00			
1000		GUARANTY TRUST COMPANY			*100000.00		
			39622.00	100000.00		89720.82	
March 18, 1941.	89720.82						
		Irving Trust Co.					
		Credit		34111.33			
				3360.00			
				37471.33		127192.15	
March 18, 1941.	127192.15						
		Irving Trust Co.		15000.00			
				30000.00			
1001		GUARANTY TRUST COMPANY			*150000.00		
		Credit		5000.00			
				50000.00	150000.00		
March. 19. 1941.	27192.15					27192.15	
		Inv Tr Co		24646.65			
		" "		86289.33			
		" "		15492.07			
		" "		26976.15			
		Credit		3420.00			
		"		3803.78			
				2812.88			
		Inv Tr Co		24646.65			
		" "		86289.33			
		" "		15492.07			
		" "		26976.15			
		Credit		3420.00			
		"		3803.78			
		"		2812.88			
		"		1247.00			
		"		39497.80			
1002		GUARANTY TRUST COMPANY			*200000.00		
		Credit 3/19		4200.00			
March. 20. 1941.	35576.11		208383.96	200000.00		35576.11	
		Inv Tr Co		122078.23			
		" "		30258.72			
				43000.00			
		Credit		12776.36			
		Credit		38598.17			
				246709.00			
March 21, 1941	282285.19					282285.19	
		Irving Trust Co.		13946.61			
				28079.70			
		Credit 3/19		30540.00			
				3701.00			
				16000.00			
1003		Irving Trust Co. GUARANTY TRUST CO.			*300000.00		
			98267.31	300000.00		74552.50	

Exhibit L-3

418

Exhibit M, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

419

(See opposite ☞)

420

Nos. 513, 528

Record

P. 142-148

REGISTER OF T.T. RECEIVABLE

DATE	No.	APPLICANT	PAYER	Face Amount	Date of Payment	REMARKS
				16569923 32		
MAY 16 1941	125	Armstrong Bk	Bk of Japan	900000	MAY 16 1941	
MAY 19 1941	126	100th Bk Ltd	" "	100000	MAY 19 1941	
	127	Banque de la Indochine Chine		250000	MAY 19 1941	
MAY 20 1941	128	d.d. to		100000	MAY 20 1941	
MAY 21 1941	129	Banque de la Indochine Chine	Bank Chosen Cent Wein Bk	250000	MAY 21 1941	
	131	Banque Nelle Orient 4C	13/1136 Irving Trust	1900	MAY 21 1941	
	130	Armstrong Bk Ltd	Bk of Japan	100000	MAY 21 1941	
MAY 24 1941	132	Banque Nelle Orient 4C	13/1139 Irving Trust	92340	MAY 24 1941	
MAY 24 1941	133	100th Bk Ltd	Bk of Japan	100000	MAY 24 1941	
	134	[illegible]	Irving Trust	16055	MAY 24 1941	
MAY 26 1941	135	Banque Nelle Orient 4C	13/1142 IRVING TRUST CO.	33250	MAY 26 1941	
			13/1148 IRVING TRUST CO.	672	MAY 26 1941	
MAY 28 1941	137	Armstrong Bk Ltd	Bk of Japan	100000	MAY 28 1941	
MAY 29 1941	138	100th Bk Ltd	" "	150000	MAY 29 1941	
	139	Armstrong Bk Ltd	" "	100000	MAY 29 1941	
JUN 2 - 1941	140	Banque Nelle Orient 4C	13/1157 IRVING TRUST CO.	125250	JUN 2 - 1941	
	141		13/1158 IRVING TRUST CO.	60750	JUN 2 - 1941	
JUN 4 - 1941	142	[illegible]	CHASE NATIONAL BANK	15000	JUN 4 1941	
JUN 5 - 1941	143	Armstrong Bk Ltd	Bk of Japan	100000	JUN 5 - 1941	
	144	Internat'l Bk	"	400000	JUN 5 - 1941	
JUN 7 1941	145	Armstrong Bk Ltd	"	50000	JUN 7 - 1941	
JUN 9 - 1941	146			50000	JUN 9 - 1941	
JUN 10 1941	147	d.d. to		100000	JUN 10 1941	
	148	Armstrong Bk Ltd		50000	JUN 10 1941	
JUN 11 1941	149	Credit Lyonnais	Credit Lyonnais	1150	JUN 11 1941	
JUN 13 1941	150	Irving Bk of Switzerland	IRVING TRUST CO.	850	JUN 13 1941	
JUN 14 1941	151	100th Bk Ltd	Bk of Japan	100000	JUN 14 1941	
JUN 16 1941	152	Banque de l'Indo Chine Saigon	Irving Trust Co.	10000	JUN 16 1941	
JUN 17 1941	153	(re Indochine Office) Armstrong Bk Ltd	Bk of Japan	100000	JUN 17 1941	
JUN 18 1941	154	Banque Nelle Orient	Irving Trust Co.	7000	JUN 18 1941	
JUN 23 1941	155	Mitsui Bk	Bk of Japan	200000	JUN 23 1941	
				19136945 22		

REGISTER OF T.T. RECEIVABLE

DATE	No.	APPLICANT	PAYER	Face Amount	Date of Payment	REMARKS
				14.003 49235		
APR 2 - 1941	93	Reichsbank Berlin	Natl. City Bk	250000	APR 2 - 1941	
APR 4 - 1941	94	Mitsui Bk Ltd	Bk of Japan	300000	APR 4 - 1941	
	95	U.S. Treasurer Washington D.C.	Natl. City Bk	9465743	APR 4 - 1941	
APR 7 - 1941	96	Credit 13/7024 Reichsbank Berlin	Irving Trust	982916	APR 7 - 1941	" 4/7
APR 9 - 1941	97	" 13/7032 " "	"	173953	APR 9 - 1941	" 4/9
	98	Banque Federal Zurich for account BC 15 in Zurich	Bk of Japan	84510	APR 9 - 1941	Remainder of T Bot dated 3/9/41
	99	Mitsui Bk Ltd	Bk of Japan	200000	APR 10 1941	
APR 11 1941	100	Banque Nelle Reichsbank Berlin 4C 13/7044	Irving Trust Co	503250	APR 11 1941	
APR 14 1941	101	Sumitomo Bk	Bk of Japan	300000	APR 14 1941	
APR 15 1941	102	Hoi Lahi Banker Ltd	" "	100000	APR 15 1941	
APR 17 1941	103	Mitsui Bk Ltd	" "	100000	APR 17 1941	
APR 18 1941	104	N I H	Chase NB	20000	APR 18 1941	
APR 21 1941	105	Kaiyo Kogyo K.K.	" "	10000	APR 21 1941	
APR 22 1941	106	Osaka Bosyoku Kaisha	Banque Fed. Zurich for account	634290	APR 22 1941	Ref to their cable #1 3/17
	7	Takasago Chem. Ind Co.	" " " for account	35203	APR 22 1941	" " " #2 3/5
	8	YKB Remit dept	" " " for account	657125	APR 22 1941	
	9	4C 16636	Swiss Bank Corp	3500	APR 22 1941	
APR 24 1941	110	Banco di Roma Roma	Chase NB	15715	APR 24 1941	
APR 24 1941	111	Banque Fed. de Lausanne	Natl City Bk	10008	APR 24 1941	
APR 26 1941	112	Bk of Tokyo	Bk of Japan	120000	APR 26 1941	
	113	Mitsubishi Bk 100 cash 200 mc	" "	300000	APR 26 1941	
APR 28 1941	114	Credit Suisse Chiasso	Credit Suisse	107292	APR 28 1941	
APR 29 1941	115	Banque de Credit Suisse	Bankers Trust Co	15000	APR 29 1941	" 4/29
APR 30 1941	116	Yasuda Bk Ltd Tokyo	Bk of Japan	50000	APR 30 1941	
MAY 1 - 1941	117		Chase NB	5000	MAY 1 - 1941	
MAY 2 - 1941	118	Mitsui Bk.	Bk of Japan	200000	MAY 2 - 1941	
MAY 3 - 1941	119	100th Bk Tokyo	" "	100000	MAY 3 - 1941	
MAY 5 - 1941	120	Banque Federale Lausanne	Natl. City Bk	6300	MAY 5 - 1941	
MAY 7 - 1941	121	Kaiyo Kogyo K.K.	Chase NB	10000	MAY 7 - 1941	" 5/7
MAY 9 - 1941	122	Mitsui Bk Ltd	Bk of Japan	150000	MAY 9 - 1941	" 5/9
MAY 10 1941	123	Sumitomo Bk	" "	150000	MAY 10 1941	
	124	Bk of Chosen	" "	40000	MAY 15 1941	
				16569922 32		

REGISTER OF T.T. RECEIVABLE

DATE	No.	APPLICANT	PAYER	Face Amount	Date of Payment	REMARKS
				19200275		
MAR 4 - 1941	32	Banque Nelle Dom Teheran 12/5624	Irving Trust	4165	MAR 4 - 1941	Wire advice rec 3/4
	33	12/5633	"	25597	MAR 4 - 1941	" "
	34	12/5634	"	1450	MAR 4 - 1941	" "
MAR 5 - 1941	35	Irving Tr Co Banque Ismael Zurich # 16276	Swiss Bank Corp	4805	MAR 5 - 1941	" 3/5
	36	CANCELLED MAR 12 1941 Pulp # 1621		3500	MAR 5 - 1941	" "
	37	Irving Bk Co	Irving Trust Co	6075	MAR 5 - 1941	Wire advice "
MAR 8 - 1941	38	" "	" "	14550	MAR 8 - 1941	Wire advice 3/8
MAR 15 1941	39	Irving Tr Co Banque Ismael Zurich 4C 16374	Swiss Bank Corp.	5700	MAR 15 1941	Wire advice rec 03/15
MAR 21 1941	40	Banque Nelle Dom Teheran 4C 13/5515	Irving Trust Co	3701	MAR 21 1941	" " 3/21
MAR 25 1941	41	Irving Bk Corp	Chase N.B.	3000	MAR 25 1941	Wire advice 3/25
APR 1 - 1941	42	Banque Nelle Dom Teheran 4C 13/7007	Irving Trust Co	5397	APR 1 - 1941	Wire advice rec 4/1
APR 7 - 1941	43	4C 87368	Chase N.B.	2405	APR 7 - 1941	" " 4/7
	44	4C 86989, 87088, 93059	Natl. City Bk	5024529	APR 7 - 1941	" " "
	45		"	530548	APR 7 - 1941	" " "
	46		"	743247	APR 7 - 1941	" " "
	47		"	705	APR 7 - 1941	" " "
	48	4C 86059	"	12789	APR 8 - 1941	" " 4/8
	49	" 87102	"	1028895	APR 8 - 1941	" " "
	50	" 85186	"	931313	APR 8 - 1941	" " "
	51	" 86183	"	490418	APR 8 - 1941	" " "
	52	" 84743	"	318409	APR 8 - 1941	" " "
	53	" 86027	"	489042	APR 8 - 1941	" " "
	54	" 86026	"	4740	APR 8 - 1941	" " "
	55	" 84265	"	29250	APR 8 - 1941	" " "
	56	" 83181	"	4640	APR 8 - 1941	" " "
	57	" 82629	"	4640	APR 8 - 1941	" " "
	58	" 82137	"	1202846	APR 8 - 1941	" " "
	59	" 81953	"	9215	APR 8 - 1941	" " "
	60	" 81586	"	4300	APR 8 - 1941	" " "
APR 9 - 1941	61	" 93059	"	104693	APR 9 - 1941	" " 4/9
	62	" 93440	"	989620	APR 9 - 1941	" " "
	63	" 81586	"	4540	APR 9 - 1941	Wire advice rec 4/9
				46605492		Continued on page 187

Nagoya

REGISTER OF T.T. RECEIVABLE

DATE	No.	APPLICANT	PAYER	Face Amount	Date of Payment	REMARKS
JAN 1 - 1941	1	S/C 82780	Natl City Bk	376754	JAN 1 - 1941	—
	2	" 82503	"	53671 4	JAN 1 - 1941	—
	3	" 84081		196383	JAN 1 - 1941	—
	4	" 84356	"	13361 46	JAN 1 - 1941	—
JAN 7 - 1941	5	Bongard Nellie Iran Teheran 4C 12/5489	Irving Trust Natl. City Bk	12000 —	JAN 7 - 1941	
JAN 22 1941	6	4C 83738		1111733	JAN 22 1941	
	7	" 84256	"	13026 62	JAN 22 1941	
JAN 24 1941	8	" 84081	"	5649 21	JAN 25 1941	Wired 1/24
	9	" 85972	"	26606 49	JAN 25 1941	
JAN 30 1941	10	" 84081	"	78534 0	JAN 30 1941	Wired rec. 1/30
JAN 31 1941	11	Bongard Nellie Iran Teheran 4C 12/5489	Irving Trust Natl. City Bk	34000 —	JAN 31 1941	" " 1/31
FEB 10 1941	12	4C 84081		148922	FEB 10 1941	" " 2/10
	13	" 83282	"	107035	FEB 10 1941	" "
APR 7 - 1941	14	" 89838	"	82673 2	APR 7 - 1941	Wired rec. 4/7
	15	" 94242	"	14339 82	APR 7 - 1941	
APR 10 1941	16	" 16570	Swiss Bank Corp.	5100 —	APR 10 1941	Wired rec. 4/10
	17	"	"	5500 —	APR 10 1941	" " "
	18	"	"	323 —	APR 10 1941	" " "
APR 15 1941	19	" 84487	Irving Trust	17299 —	APR 15 1941	Wired Irving 4/16
APR 17 1941	16	4C 12/5489 Bongard Nellie Iran Teheran	Irv Trust Swiss Bank Corp.	X 951355	APR 17 1941	Wired rec'd rec'd C 4/17.
7 - 1941	17	4C 15966		1683 5	MAY 7 - 1941	Wired rec. 5/7
MAY 26 1941	18	Bongard Nellie Iran Teheran Credit 12/5489	IRVING TRUST CO.	X 305 32 91 85865	JUN 26 1941	Wired rec'd rec'd C 5/26
	19			306257 56		

JUL 25 1941	1	4c # 3496	Natl City Bank	N.C.	5900 —	JUL 25 1941 Rec'd advice rec 7/25

187

Carried over from page 186

Osaka

REGISTER OF T.T. RECEIVABLE

DATE	No.	APPLICANT	PAYER	Face Amount	Date of Payment	REMARKS
APR 10 1941	64	4C 16570	Swiss Bk Corpn.	100547.92		
				3100 —	APR 10 1941	Wired mc 4/10
	65	"		5500 —	APR 10 1941	
	66	" 2		323 —	APR 10 1941	
APR 15 1941	67	Telegraphic payment Stockholm	Irving Trust Co. TRec 4/9 mc	17299 —	APR 15 1941	Wired mc 4/15
APR 16 1941	68	" 85668	Natl City Bk	86250	APR 16 1941	" " 4/16
MAY 2 - 1941	69	" 10302	Manufacturers Trust Co.	103616	MAY 2 - 1941	
MAY 6 - 1941	70	Banque Nationale Suisse 4C 12/6615	Irving Trust Co. Entry 5/2/41 mc	60750	MAY 6 - 1941	Refer Bankers 5/6
MAY 10 1941	71	4C 16781	Swiss Bk Corpn.	3000 —	MAY 10 1941	T Rec 5/10 mc
	72	2		1000 —	MAY 10 1941	
	73	3		34700 —	MAY 10 1941	
	74	16784	CANCELLED mc 5/13			
			CANCELLED from Tr Reference Sheet (Take Memo)	1150	MAY 10 1941	Advised Banker by cable Swallow
MAY 25 1941	75	Banque Nationale Suisse 4C 12/5614	Irving Trust Co. X	200 —	MAY 29 1941	" 5/29
	76	Banque de Commerce Basel	CHASE NATIONAL BANK	20490	MAY 29 1941	" "
JUN 2 - 1941	77		CHASE NATIONAL BANK	11000 —	JUN 2 - 1941	" 6/2
JUN 3 - 1941	78	Osaka BSC 1491 Refer Irving letter 5/29	CHASE NATIONAL BANK mc	84410	JUN 3 - 1941	" 6/3
JUN 12 1941	79	Banque Nationale de Commerce Basel Switzerland	CHASE NATIONAL BANK	1600 —	JUN 12 1941	" 6/12
				5136308		
JUL 9 - 1941	1	Banque Nationale de Commerce Basel Switzerland against docs to be presented by Guaranty Trust Co.	Chase N.B. T Rec 6/3 mc	130343	JUL 9 - 1941	Refer Bankers 7/9
JUL 23 1941	2	"	" T Rec 6/27 mc	2232 —	JUL 23 1941	Refer Bankers 7/23

JUN 12 1941 | 79 | Banque Nationale de Commerce Basel Switzerland | CHASE NATIONAL BANK | 1600 | JUN 12 1941 | " 6/12

5136308

JUL 9 - 1941 | 1 | Banque Nationale de Commerce Basel Switzerland against docs to be presented by Guaranty Trust Co. | Chase N.B. T Rec 6/3 mc | 130343 | JUL 9 - 1941 | Refer Bankers 7/9

JUL 23 1941 | 2 | " | " T Rec 6/27 mc | 2232 | JUL 23 1941 | Refer Bankers 7/23

REGISTER OF T.T. RECEIVABLE

DATE	No.	APPLICANT	PAYER	Face Amount	Date of Payment	REMARKS
				19136945 33		
JUN 24 1941	156	Bk of Tokyo	Bk of Japan	310000 —	JUN 24 1941	
	157	Comm'l Bk of China	Bk of Tokyo	173438	JUN 24 1941	Wire advice rec'd 6/24
JUN 25 1941	158	# Order MCB Tokyo	NATIONAL CITY BANK	75000 —	JUN 25 1941	
JUN 26 1941	159	Int'l Bk. Tokyo	Bk. of Japan	100000 —	JUN 26 1941	
JUN 27 1941	160	Sumitomo Bk. Ltd	"	100000 —	JUN 27 1941	
	161	MCB Tokyo	Natl City Bk	150000 —	JUN 27 1941	
				19883679 60		
JUL 1 - 1941	1	Sumitomo Bk.	Bk of Japan	150000 —	JUL 1 - 1941	
JUL 2 - 1941	2	100th Bk. Tokyo	"	150000 —	JUL 2 - 1941	
	✓ 3	Banque Nelle Comm Tokyo	IRVING TRUST CO. X	50155	JUL 2 - 1941	Wire advice rec'd 7/2
JUL 3 - 1941	4	Mitsui Bk Ltd	Bk of Japan	200000 —	JUL 3 - 1941	
JUL 5 - 1941	5	Mitsui Bk # Sumitomo Bk Zurich 4C 7995	Israel Bk of Japan	18636	JUL 5 - 1941	Wire advice 7/5
	6	Sumitomo Bk.	"	100000 —	JUL 5 - 1941	
JUL 9 - 1941	7	Mitsui Bk Ltd	"	200000 —	JUL 9 - 1941	
JUL 11 1941	8	Mitsubishi Bk.	"	100000 —	JUL 11 1941	
	✓ 9	Banque Nelle Comm Tokyo Cr. 13/7225	IRVING TRUST CO. X	500 —	JUL 11 1941	Wire advice rec'd 7/11
JUL 14 1941	10	Sumitomo Bk.	Bk of Japan	100000 —	JUL 14 1941	
JUL 15 1941	11	"	"	100000 —	JUL 15 1941	
	12	"	CHASE NATIONAL BANK	10000	JUL 15 1941	
	13	Mitsubishi Bk Ltd	Bk of Japan	200000 —	JUL 17 1941	
JUL 21 1941	14	Sumitomo Bk Ltd	"	100000 —	JUL 21 1941	
	15	Yokohama Bussan Kaisha	Guaranty Trust Co	7326 —	JUL 21 1941	Ltr Cable rec'd 7/21
	16	Industrial Bk of Japan Ltd	— " —	2000 —	JUL 22 1941	Wire rec 7/21
JUL 22 1941	17	Banque de l'Indochine Saigon	Pan Am Tr Co.	10000 —	JUL 22 1941	Ltr Cable rec'd 7/22
	✓ 18	Banque Nelle Comm Credit B/7234	IRVING TRUST CO. X	4760 —	JUL 22 1941	" "
JUL 23 1941	19	Sumitomo Bank	Bk of Japan	100000 —	JUL 23 1941	
JUL 24 1941	20	Bk of Chosen	"	50000 —	JUL 24 1941	
	21	Sumitomo Bank	"	100000 —	JUL 24 1941	
JUL 25 1941	22	"	"	100000 —	JUL 25 1941	
	23	Yasuda Bank	"	60000 —	JUL 25 1941	
				1306326		
			Transit to Engl 15	18469511 91		

424

Exhibit N-1, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

425

(See opposite ☞)

426

TELEGRAM.

The Yokohama Specie Bank, Ltd.
NEW YORK

SEC.		IMP	V
RES.		CONT	
CASH		ACCT	
EXP.		BOND	
RECEIVED BY			

From OSAKA

Dated OCT 10TH A.M.P.M.

Rec'd OCT 10TH A.M.P.M.

<62> YOURS FEBRUARY 26TH
MAY 29TH BANK HELLIE IRAN CREDIT
12/5613 12/5614 WE BOOKED TT BOUGHT
ONLY DOLLARS 1000.00 AGAINST FORMER
PLEASE REFUND BALANCE DOLLARS 3500.00
LESS OUR CHARGES DOLLARS 13.85

NO.55A

NOV 5 - 1941

Exhibit N-1

430

Exhibit N-2, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

431

(See opposite ☞)

432

TELEGRAM.

The Yokohama Specie Bank, Ltd.

NEW YORK

Re Mr 484

From Osaka

Dated Sept 9 A.M.P.M.

Rec'd 4 A.M.P.M.

SEC.		IMP. ✓	
RES.		CONT.	
CASH.		ACCT.	
EXP.		BOND	
RECEIVED BY			

39 Yours March 4th

Banque Nellie Dean credit

12/5632 Cancell Yours

TT K and refund

$ 1450 00 to Irving

less our charges

$ 8.45

64 TT K #1,450. Mar. 4, 1944

Refunded with thanks

Exhibit I-2

MICROCARD
TRADE MARK ®

1770

MATTHEW BENDER & COMPANY
MB

49

436

Exhibit N-3, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

437

(See opposite ☞)

438

TELEGRAM.

The Yokohama Specie Bank, Ltd.

NEW YORK

SEC		IMP	
RES		CONT	
CASH	✓	ACCT	
EXP		BOND	
RECEIVED BY			

From TOKIO

Dated DEC 2ND A.M.P.M.

Rec'd DEC 2ND A.M.P.M.

A/P

T.T.NO.5 (32)

IRVING BANK

NEWYORK

A/C BANK MELLI

TEHERAN

$1739.53

REFUNDMENT L/C 13/7032

LET THEM WIRE RECEIPT TO TEHERAN

0.15

Exhibit No. 3

442

Exhibit N-4, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

443

(See opposite. ☞ *)*

444

NOV 2 8 1941

Irving is applying for a license
or appointment to them. (Mr Nelson)

TELEGRAM.

The Yokohama Specie Bank, Ltd.

NEW YORK

SEC.		IMP.	✓
RES.		CONT.	
CASH.	✓	ACCT.	
EXP.		BOND	

RECEIVED BY .....

From NAGOYA

Dated NOV 27TH A.M.P.M.

Rec'd NOV 28TH A.M.P.M.

NO.17 (536)
BANQUE MELLIE IRAN
DEPOSIT $95994.22 AGANIST
THEIR CREDIT 12/5489
CANCEL YOUR PREVIOUS ENTRY AND PAY

NO.17 (536)
BANQUE MELLIE IRAN
DEPOSIT $95994.22 AGANIST
THEIR CREDIT 12/5489
CANCEL YOUR PREVIOUS ENTRY AND PAY
ABOVE AMOUNT TO IRVING TRUST CO
LET THEM HAVE RECEIPT.

4/17/41	Nagoya TB	16	$95,135.57
6/26/41		18	858.65
			$95,994.22

0.153

Exhibit N-4

448

Exhibit N-5, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

449

(See opposite ☞)

450

TELEGRAM.

The Yokohama Specie Bank, Ltd.

NEW YORK

From Tokyo

Dated Oct 6th A.M.P.M.

Rec'd ____ A.M.P.M.

SEC.		IMP.	
RES.		CONT.	
CASH.	✓	ACCT.	
EXP.		BOND	

RECEIVED BY

A/P # 3 OCT 6 '41 (137) ✓

Irving Trust Co

a/c Banque Mellie Iran

Teheran

as repayment funds of

their L/C 13/7136

$1.900.00

Advise Oct 14th

34

Exhibit N-5

454

Exhibit N-6, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

455

(See opposite ☞)

456

TELEGRAM.

The Yokohama Specie Bank
NEW YORK

From Tokyo
Dated Oct 27th A.M.P.M.
Rec'd " A.M.P.M.

SEC.		IMP.	
RES.		CONT.	
CASH.	✓	ACCT.	
EXP.		BOND	
RECEIVED BY			

A/P # I 06127 (265) V

Irving Trust Co.

a/c Banque Melli Iran

Teheran

as repayment of fund of their

L/C 13/7157 $1252.50

L/C 13/7158 $ 607.50

1860.00

Instruct them cable to Teheran

140

Exhibit N-6

460

461

Exhibit N-7, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

(See opposite ☞)

462

TELEGRAM

The Yokohama Specie Bank, Ltd.

NEW YORK

SEC.		IMP.	✓
RES.		CONT.	
CASH.		ACCT.	
EXP.		BOND	
RECEIVED BY			

From TOKIO

Dated DEC 2ND A.M.P.M.

Rec'd DEC 2ND A.M.P.M.

(35) 396

YOURS JULY 2ND 11TH AND 22ND
CREDITS UNUTILIZED REFUND $5761.55
TO IRVING TRUST COMPANY CANCELLING
YOUR ENTRY AND LET THEM
WIRE TO TEHERAN

7/4	$501.55	TR 3	13/7311
7/11	500 -	" 9	" 13/7335
7/22	4760 -	18	13/7334
	$5761.55		

NO. 13

Exhibit N-7

466 **Exhibit O, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

(To New York)

Cable Address
"SHOKIN"

Code Used.
A. B. C. 6th Editions
467 Bentley's (Complete & Second)
Lieber's
Peterson International
(Second & Third Editions)
Western Union
Oriental 3-Letter Code

THE YOKOHAMA SPECIE BANK, LIMITED.

Osaka, September 9th, 1941.

The Manager,
Banque Mellie Iran,
468 Tehran.

Dear Sir,

Re: Your credit No. 12/5632 for $1,450—
by order Messrs. Davoud Yoosefian.

Receiving your cable dated 7th instant in regard to the above credit,
i.e.

"Cable whether credit 12/5632 expired unutilized if so confirm telegraphically refund credit amount our account with Irving New York."

Exhibit O, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

469

we have instructed Our New York Office to-day by wire as follows:–

"Yours March 4th Banque Mellie Iran Credit 12/5632 cancell your T.T.R. and refund $1.450. –to Irving less our charges Dollars eight cents forty-five."

We expect they will endeavour to get permission and execute your request.

470

We may add that our cable charges amount to $8.45 @ 23 11/16 y35.67 which beneficiaries refused to pay.

Trusting our above action will meet your requirement.

Yours faithfully,

FOR THE YOKOHAMA SPECIE BANK, LTD.

P. P. Manager.

Refer to our D/N #2124
Copy: To our New York Office.

471

[Receipt stamp by Y. S. B. N. Y. Agency dated Oct. 25, 1941]

472 **Exhibit P, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

THE YOKOHAMA SPECIE BANK, LTD.,

Export Department Osaka, October 14th, 1941.

No. 972

To The Yokohama Specie Bank, Ltd.,
New York.

473 Dear Sirs,

Re: Banque Mellie Iran, Teheran
L/C No. 12/5613, 12/5614

We received your cable of the 26th February last reading as follows:—

"Received to-day from Irving Trust Co. for a/c of yourselves by order of Banque Mellie Iran, Teheran the sum of $3,200.00 regarding Credit No. 12/5613 the sum of $1,100.00 regarding Credit No. 12/5614 as your T.T.
474 Bought Wire if objectionable"

and further yours of the 29th May last reading as follows:—

"Received to-day from Irving Trust Co. by order of Banque Mellie Iran, Teheran Credit 12/5614 the sum of $200.—as your T.T. Bought Wire if objectionable"

Under the Credit No. 12/5613, we received shipping documents amounting to $1,000.—from the beneficiary on the 28th of March last and booked our T.T. Bought for that sum only.

Exhibit P, Annexed to Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

475

On the 24th ultimo we received a cable of the 22nd from the credit-issuing as follows:—

"Remit telegraphically Irving Trust New York amount Credit 12/5614 and balance Credit 5613 cabling execution."

In accordance with their instruction we wired you on the 10th instant as follows:—

476

"Yours February 26th May 29th Banque Mellie Iran Credits 12/5613, 12/5614 We booked T.T. Bought only dollars 1,000.— against former please refund balance dollars 3,500.—less our charges dollars 13 cents 85"

On the same day we despatched a cable to the issuing bank as follows:—

"Yours 22nd instruction executed."

The amount of $13.85 representing our cost of cables to you and to the issuing bank which the beneficiary refused to pay, is made up as follows:—

477

Cost of cable to you:	¥46.80	
" to Teheran:	11.66	
	¥58.46 @ 23 11/16	$13.85

We have to-day issued our D/N No. 2125 for a like amount which please settle on your side.

Trusting you will do the necessary,

Yours faithfully,

FOR THE YOKOHAMA SPECIE BANK, LTD.

P.P. Manager.

TK

[Receipt stamp by Y. S. B. N. Y. Agency dated Nov. 17, 1941]

478 **Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

[Same Title.]

Empire of Iran,
District of Teheran,
City of Teheran,
Consulate of the United
States of America, } ss.:

479 Mr. Mohammed Hossein Sadri, being duly sworn, deposes and says:

1. I am an officer, to wit, the Assistant Director of the Chief Office of Banque Mellie Iran, the plaintiff in the above entitled action.

2. Banque Mellie Iran is a corporation organized and existing under the laws of Iran and has its principal place of business at Teheran, Iran.

3. In the year 1941, Banque Mellie Iran, acting
480 through its correspondent, Irving Trust Company of New York, paid to The Yokohama Specie Bank, Ltd., New York Agency, in New York City, on various occasions, sums of money aggregating $117,162.27. These payments were made in order to establish certain credits to be drawn upon by shippers in Japan at certain designated offices of The Yokohama Specie Bank, Ltd. in Japan. The date when each such payment was made to The Yokohama Specie Bank, Ltd., New York Agency, by Irving Trust Company, the amount thereof, the number assigned to the credit involved, and the office of The Yokohama Specie Bank, Ltd.

 481

which said New York Agency was requested to advise, were as follows:

Date	Amount	Credit Number	Branch
February 26, 1941	$ 3,200.00	12/5613	Osaka
February 26, 1941	1,100.00	12/5614	Osaka
May 29, 1941	200.00		
March 4, 1941	1,450.00	12/5632	Osaka
March 4, 1941	255.97	12/5633	Osaka
April 9, 1941	1,739.53	13/7032	Tokyo
April 17, 1941	95,135.57	12/5489	Nagoya
June 26, 1941	858.65		
May 21, 1941	1,900.00	13/7136	Tokyo
June 2, 1941	1,252.50	13/7157	Tokyo
June 2, 1941	607.50	13/7158	Tokyo
July 2, 1941	501.55	13/7211	Tokyo
July 11, 1941	500.00	13/7225	Tokyo
July 22, 1941	4,760.00	13/7234	Tokyo
March 20, 1941	3,701.00	12/5515	Osaka

482

At the time each of these payments was made by Irving Trust Company on behalf of Banque Mellie Iran, Banque Mellie Iran by cable notified The Yokohama Specie Bank, Ltd. at the appropriate office in Japan that it had opened an unconfirmed credit in favor of a named shipper in Japan, to be drawn upon in connection with the anticipated shipment by such shipper of certain merchandise to a customer of Banque Mellie Iran. 483

4. With the exception of the sum of $1,000, paid to the beneficiary under Credit No. 5613, which was opened on February 26, 1941, none of the amounts set forth above was drawn upon by the shipper within the time designated, and the credit expired without being availed of. Thereupon,

484 *Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

Banque Mellie Iran, by cable to the respective offices of The Yokohama Specie Bank, Ltd. in Japan, requested The Yokohama Specie Bank, Ltd. to remit to Irving Trust Company the amount which had been paid by it to The Yokohama Specie Bank, Ltd. New York Agency for the purpose of opening such credits. Each of the respective offices of The Yokohama Specie Bank, Ltd. thereupon advised Banque Mellie Iran that it had notified the
485 New York Agency of The Yokohama Specie Bank, Ltd. to make such refunds. Thereafter, as appears from the affidavit of an officer of Irving Trust Company, submitted herewith, The Yokohama Specie Bank, Ltd. New York Agency, on December 2, 1941, notified Irving Trust Company in writing that it had been requested by its Tokyo, Nagoya and Osaka offices to refund to Irving Trust Company the sums above mentioned which previously had been paid to The Yokohama Specie Bank, Ltd. New York Agency, except the sums of $255.97 under Credit No. 12/5633 and $3,701 under Credit
486 No. 12/5515, provided said New York Agency was authorized to do so by the appropriate license of the United States Treasury Department. Before a license could be obtained from the United States Treasury Department authorizing the payment of said sums to Irving Trust Company, the Superintendent of Banks of the State of New York took possession of the business and property of the New York Agency of The Yokohama Specie Bank, Ltd., and no part of said sums has been paid to plaintiff.

5. The following documents hereinafter described, true and accurate copies of which are

Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

487

hereto annexed, relate to the above transactions as indicated:

As to Credit No. 12/5613—On February 25, 1941, Banque Mellie Iran telegraphed The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit A-1. Banque Mellie Iran received letter dated March 28, 1941, from The Yokohama Specie Bank, Ltd., as per copy hereto attached as Exhibit A-2. On June 26, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit A-3. On September 22, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit A-4. Banque Mellie Iran received cable dated October 10, 1941, from The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit A-5. Banque Mellie Iran received letter dated October 14, 1941 from The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit A-6.

488

As to Credit No. 12/5614—On February 25, 1941, Banque Mellie Iran telegraphed The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit B-1. On May 27, 1941, Banque Mellie Iran telegraphed The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit B-2. On June 26, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit B-3. On September 22, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit B-4. Banque Mellie Iran received a cable dated October 10, 1941, from The Yokohama Specie Bank, Ltd., Osaka, as

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per copy hereto attached as Exhibit B-5. Banque Mellie Iran received letter dated October 14, 1941 from The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit B-6.

As to Credit No. 12/5632—On March 2, 1941, Banque Mellie Iran telegraphed The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit C-1. On April 8, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank,
491 Ltd., Osaka, as per copy hereto attached as Exhibit C-2. On September 7, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit C-3. Banque Mellie Iran received letter dated September 9, 1941 from The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit C-4.

As to Credit No. 12/5633—On March 2, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit D-1. On October 21, 1941, Banque Mellie
492 Iran cabled The Yokohama Specie Bank, Ltd., Osaka, as per copy hereto attached as Exhibit D-2.

As to Credit No. 13/7032—On April 8, 1941, Banque Mellie Iran telegraphed The Yokohama Specie Bank, Ltd., Tokyo, as per copy hereto attached marked Exhibit E-1. On July 8, 1941, Banque Mellie Iran telegraphed The Yokohama Specie Bank, Ltd., Tokyo, as per copy hereto attached marked Exhibit E-2. On October 5, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy hereto attached marked Exhibit E-3. On October 21, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank,

Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 493

Ltd., Tokyo, as per copy attached hereto marked Exhibit E-4. On December 2, 1941, Banque Mellie Iran received a cable from The Yokohama Specie Bank, Ltd., Tokyo, as per copy hereto attached as Exhibit E-5.

As to Credit No. 12/5489—On December 17, 1940, Banque Mellie Iran telegraphed The Yokohama Specie Bank, Ltd., Nagoya, as per copy hereto attached marked Exhibit F-1. On December 25, 1940, Banque Mellie Iran cabled The 494
Yokohama Specie Bank, Ltd., Nagoya, as per copy attached hereto marked Exhibit F-2. On April 16, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Nagoya, as per copy attached hereto marked Exhibit F-3. On May 10, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Nagoya, as per copy attached hereto marked Exhibit F-4. On June 25, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Nagoya, as per copy attached hereto marked Exhibit F-5. On October 21, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., 495
Nagoya, as per copy attached hereto, marked Exhibit F-6. On November 4, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Nagoya, as per copy attached hereto marked Exhibit F-7. On November 6, 1941, The Yokohama Specie Bank, Ltd., Nagoya, cabled Banque Mellie Iran, as per copy attached hereto marked Exhibit F-8.

As to Credit No. 13/7136—On May 20, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit G-1. On July 27, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank,

496 *Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

Ltd., Tokyo, as per copy attached hereto marked Exhibit G-2. On September 11, 1941, The Yokohama Specie Bank, Ltd., Tokyo, cabled Banque Mellie Iran, as per copy attached hereto marked Exhibit G-3.

As to Credit No. 13/7157—On May 29, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit H-1. On September 22, 1941,
497 Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit H-2. On October 21, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit H-3. On October 27, 1941, Banque Mellie Iran received cable from The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit H-4.

As to Credit No. 13/7158—On May 29, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto
498 marked Exhibit I-1. On September 22, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit I-2. On October 21, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit I-3. On October 27, 1941, The Yokohama Specie Bank, Ltd., Tokyo, cabled Banque Mellie Iran as per copy attached hereto marked Exhibit I-4.

As to Credit No. 13/7211—On June 30, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto

Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

499

marked Exhibit J-1. On October 5, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit J-2. On December 2, 1941, The Yokohama Specie Bank, Ltd., Tokyo, cabled Banque Mellie Iran, as per copy attached hereto marked Exhibit J-3.

As to Credit No. 13/7225—On July 10, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto 500 marked Exhibit K-1. On October 5, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit K-2. On October 21, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit K-3. On December 2, 1941, The Yokohama Specie Bank, Ltd., Tokyo, cabled Banque Mellie Iran, as per copy attached hereto marked Exhibit K-4.

As to Credit No. 13/7234—On July 21, 1941, Banque Mellie Iran cabled The Yokohama Specie 501 Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit L-1. On October 21, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Tokyo, as per copy attached hereto marked Exhibit L-2. On December 2, 1941, The Yokohama Specie Bank, Ltd., Tokyo, cabled Banque Mellie Iran, as per copy attached hereto marked Exhibit L-3.

As to Credit No. 12/5515—On January 1, 1941 Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Osaka, as per copy attached hereto marked Exhibit M-1. On March 17, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank,

502 *Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

Ltd., Osaka, as per copy attached hereto marked Exhibit M-2. On October 21, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank, Ltd., Osaka, as per copy attached hereto marked Exhibit M-3. On November 7, 1941, The Yokohama Specie Bank, Ltd., Osaka, cabled Banque Mellie Iran, as per copy hereto attached marked Exhibit M-4. On November 10, 1941, Banque Mellie Iran cabled The Yokohama Specie Bank,
503 Ltd., Osaka, as per copy attached hereto marked Exhibit M-5.

6. Deponent is of the belief that there is no defense to this action.

MOHAMMAD HOSSEIN SADRI.

Subscribed and sworn to before me this second day of June, 1945.

M. WILLIAMS BLAKE

504

M. Williams Blake
Vice Consul of the United States of America.

(Seal of the American Consul, Tehran, Iran)

American
Foreign Service
$2.00
Fee Stamp
Jun 2 1945
Service No. 709

505

Exhibit A-1, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

Cable Dated February 25, 1941 Sent by Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

Order Sherkat Abbasali Gholamali Ghaffari we open irrevocable credit 12/5613 Dollars 3200/— favour Oriental Import and Export Co. GK PO Box 180 Kobe valid end June available against fullset on board blank endorsed bladings invoices 506
certificates origin insurance policies against fire sinking theft and war-risks evidencing shipments about 50 cases rubber footwear cif Bushire stop credit 12/5614 similar above except Dollars 1100/— one shipment about 18 cases rubber sheet stop credit 12/5615 similar above except Dollars 650/— orderer Nooreddin Momtazi one shipment about ten cases rubber footwear stop notify beneficiaries without your confirmation have telegraphed Irving Trust Company New York remit you cover telegraphically.

507

508 **Exhibit A-2, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

THE YOKOHAMA SPECIE BANK LIMITED

OSAKA, March 28th, 1941

The Manager,
Banque Mellie Iran,
Tehran.

509

Dear Sirs,

Re: Our payment to Messrs, Oriental Import and Export Co. G. K. under your letter of Credit No. 12/5613 for $3,200.00 on account of Messrs. Sherkat Abbassali Gholamali Ghaffari, Teheran.

We beg to inform you that in accordance with the above-mentioned letter of credit we have this day paid to Messrs. Oriental Import and Export
510 Co., G. K., Kobe the sum of $1,000.00 against their receipt accompanied by the shipping documents covering 25 cases Rubber Boots shipped to Bushire per s.s. "Mantai Maru".

For reimbursement of our payment we had received the sum $3,200.00 from the Irving Trust Co., New York, through our New York office.

We now send you the relative shipping documents herewith enclosed, for which please acknowledge receipt.

Exhibit A-2, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 511

We are holding the balance of your remittance to meet further shipment.

Yours faithfully,

FOR THE YOKOHAMA SPECIE BANK LTD.

Enclosures:—

512

B/L	1	1
Invoice	1	1
Certificate of Origin	1	1
Policy	1	1

(Reference: Special Bill No. 2124)

513

514 **Exhibits A-3, A-4, A-5, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

Exhibit A-3.

Cable Dated June 26, 1941 Sent by Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

No. 9468

515 We extend validity credits 12/5613 5614 to end August and end July respectively notify beneficiaries.

Exhibit A-4.

Cable Dated September 22, 1941 Sent by Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

Remit telegraphically Irving Trust New York amount credit 12/5614 and balance credit 5613
516 cabling execution.

Exhibit A-5.

Cable Dated October 10, 1941 Sent by Yokohama Specie Bank at Osaka, to Plaintiff at Teheran.

Yours twenty-second instruction executed.

Exhibit A-6, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 517

THE YOKOHAMA SPECIE BANK LIMITED,

OSAKA, October 14th, 1941

The Manager,
Banque Mellie Iran,
Teheran.

518

Dear Sirs,

Re: Your Documentary Credit No. 12/5613, 12/5614

We acknowledge the receipt of your cable of the 22nd ultimo reading as follows:

"Remit telegraphically Irving Trust New York amount credit 12/5614 and balance credit 5613 cabling execution."

In accordance with your request, we wired our New York Office on the 10th instant as follows: 519

"Yours February 26th May 29th Banque Mellie Iran Credits 12/5613, 12/5614 we booked T. T. Bought only Dollars 1.000.— against former please refund balance Dollars 3.500.—less our charges Dollars 13 cents 85".

On the same day we despatched a cable to you as follows:

"Yours 22nd instruction executed."

which we hereby confirm.

520 *Exhibit A-6, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

The amount of $.13.85, representing cost of our cables to you and our New York Office which the beneficiary refused to pay is made up as under:

Cost of cable to you	¥ 11.66		
" " " to New York	46.80	sight b[illegible] g	
	¥ 58.46	à 23 11/16	$.13.85

521 Trusting that our action will meet with your approval.

Yours faithfully,

FOR THE YOKOHAMA SPECIE BANK LTD.

Exhibits B-1, B-2, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

522

Exhibit B-1.

(Same as Sadri Exhibit A-1.)

Exhibit B-2.

Cable Dated May 27, 1941 Sent by Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

We increase amount credit 12/5614 by Dollars 200/—other conditions unchanged notify beneficiaries stop will receive cover telegraphically.

Exhibits B-3, B-4, B-5, B-6, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 523

Exhibit B-3.

(Same as Sadri Exhibit A-3.)

Exhibit B-4.

(Same as Sadri Exhibit A-4.) 524

Exhibit B-5.

(Same as Sadri Exhibit A-5.)

Exhibit B-6.

(Same as Sadri Exhibit A-6.)

525

526 **Exhibits C-1, C-2, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

Exhibit C-1.

Cable Dated March 2, 1941 Sent by Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

Order Davoud Yoosefian we open irrevocable credit 12/5632 Dollars 1450 favour Oriental Im-
527 port and Export Company GK PO Box 180 Kobe valid end May available against fullset onboard blank endorsed blading invoice certificate origin insurance policy against fire sinking and warrisks evidencing shipment approximately 25 cases rubber boots cif Bushire stop Order Rahim Pourmoradi we open irrevocable credit 12/5633 Dollars 255/97 favour Oriental Sanitary Laboratories 6 Chome Itabashi machi Itabashiku Tokyo valid first August available against postal receipt invoice certificate origin insurance policy against shortage fire sinking theft and warrisks evidenc-
528 ing shipment approximately 360 gross preservatives cif transport charges to Teheran stop notify above beneficiaries without your confirmation cabled Irving Trust Newyork remit you covers telegraphically.

Exhibit C-2.

Cable Dated April 8, 1941 Sent by Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

We extend validity credit 12/5632 to end August notify beneficiaries.

529

Exhibits C-3, C-4, D-1, D-2, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

Exhibit C-3.

Cable Dated September 7, 1941 Sent by Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

Cable whether credit 12/5632 expired unutilized if so cofirm telegraphically refund Credit amount our account with Irving Newyork.

530

Exhibit C-4.

(Same as Holzka Exhibit O.)

Exhibit D-1.

(Same as Sadri Exhibit C-1.)

531

Exhibit D-2.

Cable Dated October 21, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

Ours seventh September credit 12/5632 without reply stop credits 12/5633 5515 also expired please remit telegraphically above credit amounts to Irving Trust Newyork instructing them advise us telegraphically stop yours 17 credits 12/5613 5614 cable Irving Newyork confirm us remittance telegraphically.

532 **Exhibits E-1, E-2, E-3, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

Exhibit E-1.

Cable Dated April 8, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio.

Order Sherkat Peyman we open irrevocable credit 13/7032 Dollars 1739/53 favour Oriental Import and Export Co. GK. Kobe POB 180 valid
533 end August available against fullset onboard blank endorsed bladings invoices certificates origin insurance policies against sinking fire damage by water and warrisks evidencing shipments about 180 dozens rubber boots cif Bushire stop notify beneficiaries without your confirmation have telegraphed IrvingTrust Company Newyork remit you cover telegraphically.

Exhibit E-2.

Cable Dated July 8, 1941 from Plaintiff at
534 **Teheran to Yokohama Specie Bank at Tokio.**

We extend validity credit 13/7032 to end September notify beneficiaries.

Exhibit E-3.

Cable Dated October 5, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio.

Credit 13/7032 7211 7225 expired if unutilized please credit our account with Irving Trust New York telegraph execution.

535

Exhibits E-4, E-5, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

Exhibit E-4.

Cable Dated October 21, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio.

Anxiously awaiting reply ours 22 September credits 13/7157 7158 and ours fifth instant credits 13/7032 7211 7225 stop credits 13/7203 7234 also 536
expired stop please remit telegraphically above amounts to Irving Trust New York instructing them advise us telegraphically wiring execution.

Exhibit E-5.

Cable Dated December 2, 1941 from Yokohama Specie Bank at Tokio to Plaintiff at Teheran.

Yours october twentyfirst twentythird credit 13/7203 utilized already sevenzero-threetwo seven- 537
twooneone seventwotwofive seventwothreefour instructed refund to Irvingbank Newyork account.

538 **Exhibits F-1, F-2, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

Exhibit F-1.

Cable Dated December 17, 1940 from Plaintiff at Teheran to Yokohama Specie Bank at Nagoya.

Order Edareh Moamelat Khareji we open irrevocable credit 12/5489 Dollars 36000 favour
539 Toyo Trading Company valid end december available against following documents in 5 copies fullset onboard blank endorsed bladings invoice certificate origin specification and weight lists insurance policy covering invoice value plus ten percent against WPA damage by fresh or sea water fire theft pilferage total and partial loss upto 30 days after arrival goods to destination sling loss nondelivery sinking and warrisks up to destination evidencing one shipment 3000 tons artificial portland cement British std specification in 5 ply paper bags 50 kilos each cif Bandershah-
540 poor stop goods must be shipped during december stop notify beneficiaries without your confirmation reimburse telegraphically on Irvingbank Newyork for your payments.

Exhibit F-2.

Cable Dated December 25, 1940 from Plaintiff at Teheran to Yokohama Specie Bank at Nagoya.

Validity and shipping date credit 12/5489 extended end January stop partial shipment acceptable notify beneficiaries.

Exhibits F-3, F-4, F-5, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

541

Exhibit F-3.

Cable Dated April 16, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Nagoya.

We increase amount credit 12/5489 by Dollars 95135/57 against shipment further 8000 tons during april, may, june notify beneficiaries stop have cabled Irving Trust Company Newyork remit you cover telegraphically.

542

Exhibit F-4.

Cable Dated May 10, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Nagoya.

Credit 12/5489 we reduce quantity goods to 10408 tons instead 11000 and extend validity to thirtyfirst august notify beneficiaries.

543

Exhibit F-5.

Cable Dated June 25, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Nagoya.

We increase amount credit 12/5489 by Dollars 858/65 against further shipment of sixtyseven tons other conditions unchanged notify beneficiaries stop have cabled Irvingbank Newyork remit you cover telegraphically.

544 **Exhibits F-6, F-7, F-8, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

Exhibit F-6.

Cable Dated October 21, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Nagoya.

Remit telegraphically unutilized amount credit
545 12/5489 to Irving Trust Newyork instructing them advise us telegraphically.

Exhibit F-7.

Cable Dated November 4, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Nagoya.

Please telegraph execution ours 21 ultimo credit 12/5489.

546

Exhibit F-8.

Cable Dated November 6, 1941 from Yokohama Specie Bank at Nagoya to Plaintiff at Teheran.

Applied permit for remittance to Irving Trust.

Exhibits G-1, G-2, G-3, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

547

Exhibit G-1.

Cable Dated May 20, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio.

Order Sherkat Kazerooni Timsar we open irrevocable credit 13/7136 Dollars 1900/— favour Hokoku Trading Co. Ltd. Nippon building Kyomachi Kobe valid end June available against 548
fullset onboardblank endorsed blading invoice certificate origin insurance policy covering invoice value plus twenty percent against fire sinking shortage damage theft and warrisks evidencing shipment 300 dozens rubber boots for ladies and children cif Bushire stop notify beneficiaries without your confirmation have telegraphed Irving Trust Company Newyork remit you cover telegraphically.

Exhibit G-2.

549

Cable Dated July 27, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio.

Please confirm telegraphically if credit 13/7136 expired unutilized also date refund credit amount our account with Irving Trust Newyork.

Exhibit G-3.

Cable Dated September 11, 1941 from Yokohama Specie Bank at Tokio to Plaintiff at Teheran.

Yours twentyseventh credit 13/7136 expired unused will refund pending permit.

550 **Exhibits H-1, H-2, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

Exhibit H-1.

Cable Dated May 29, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio.

Order Sherkat Tazamani Abbasali Gholamali Ghaffari we open irrevocable credit 13/7157 dol-
551 lars 1252/50 favour Nanyo Sogo Boeki Kabushiki Kaisha Kobe valid end August available against fullset onboard blank endorsed blading invoice certificate origin insurance policy against fire theft sinking shortage warrisks evidencing shipment football blaster cif Bushire stop credit 13/7158 similar above except dollars 607/50 favour Oriental Import & Export Co. PO Box 180 Kobe valid end July re about 90 dozens footwear stop notify beneficiaries without your confirmation have cabled Irvingbank Newyork remit you covers telegraphically.

552

Exhibit H-2.

Cable Dated September 22, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio.

If credits 13/7157 and 7158 expired unutilized remit telegraphically amounts Irving Trust New York cabling execution.

Exhibits H-3, H-4, I-1, I-2, I-3, I-4, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 553

Exhibit H-3.

(Same as Sadri Exhibit E-4.)

Exhibit H-4.

Cable Dated October 27, 1941 from Yokohama Specie Bank at Tokio to Plaintiff at Teheran. 554

Yours twentyfirst credit 13/7157 to 7158 remitted today Irving Trust New York account yourselfs others applying government permission for remittance.

Exhibit I-1.

(Same as Sadri Exhibit H-1.)

555

Exhibit I-2.

(Same as Sadri Exhibit H-2.)

Exhibit I-3.

(Same as Sadri Exhibit E-4)

Exhibit I-4.

(Same as Sadri Exhibit H-4.)

556

Exhibits J-1, J-2, J-3, K-1, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

Exhibit J-1.

Cable Dated June 30, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio.

We open irrevocable credit 13/7211 similar credit 13/7148 except Dollars 501/55 valid end
557 September re about twothousand yards rubber sheet stop notify beneficiaries without your confirmation have telegraphed Irving Trust Newyork remit you cover telegraphically.

Exhibit J-2.

(Same as Sadri Exhibit E-3.)

Exhibit J-3.

558 (Same as Sadri Exhibit E-5.)

Exhibit K-1.

Cable Dated July 10, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio.

We open irrevocable credit 13/7225 similar credit 13/7211 except Dollars 500/—shipment woolen yarns stop transshipment at Bombay acceptable stop notify beneficiaries without your confirmation have telegraphed Irvingbank New York remit you cover telegraphically.

559

Exhibits K-2, K-3, K-4, L-1, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

Exhibit K-2.

(Same as Sadri Exhibit E-3)

Exhibit K-3.

560

(Same as Sadri Exhibit E-4)

Exhibit K-4.

(Same as Sadri Exhibit E-5)

Exhibit L-1.

Cable Dated July 21, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Tokio. 561

Order Sherkat Nesbi Emtiaz we open irrevocable credit 13/7234 Dollars 4760/—favour Chikuma Co. Ltd. 453 Motomachi 3 Chome Kobe valid 22 September available against fullset onboard blank endorsed bladings invoices certificates origin insurance policies covering invoice value plus ten percent against fire theft shortage damage loss sinking and warrisks evidencing shipment 400 bundles woolen yarn cif Bushire stop notify beneficiaries without your confirmation have telegraphed Irving Trust Newyork remit you cover telegraphically.

562 **Exhibits L-2, L-3, M-1, M-2, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

Exhibit L-2.

(Same as Sadri Exhibit E-4)

Exhibit L-3.

(Same as Sadri Exhibit E-5)

563

Exhibit M-1.

Cable Dated January 1, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

Order Haji Mohamad Assemi we open irrevocable credit 12/5515 Dollars 3701 favour Fujii and Co Ltd valid second march available against fullset onboard blank endorsed blading invoice certificate origin insurance policy covering invoice value plus 20 percent against sinking fire damage by water theft damage and warrisks evidencing
564 one shipment about 4500 lbs woollen hosiery yarn cif Bandarshahpoor stop notify beneficiaries without your confirmation stop have instructed Irving Trust Company Newyork pay cover to your Newyork office requesting latter advise you telegraphically.

Exhibit M-2.

Cable Dated March 17, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

We extend validity credit 12/5515 to end April.

565

Exhibits M-3, M-4, M-5, Annexed to Affidavit of Mohammed Hossein Sadri, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

Exhibit M-3.

(Same as Sadri Exhibit D-3)

Exhibit M-4.

566

Cable Dated November 7, 1941 from Yokohama Specie Bank at Osaka to Plaintiff at Teheran.

Yours twentyfirst credits 5632 5613 5614 reported license for refundment denied by ammerican authorities stop 5633 5515 mail instructing our Newyork however little prospect.

Exhibit M-5.

567

Cable Dated November 10, 1941 from Plaintiff at Teheran to Yokohama Specie Bank at Osaka.

Yours seventh Credits 5633 5515 please apply telegraphically instead by mail.

568 **Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

[Same Title]

State of New York,
County of New York, } ss.:

William P. Leary, being duly sworn, deposes and says:

569 I am an attorney and counsellor at law, associated with the firm of Winthrop, Stimson, Putnam & Roberts, attorneys for the plaintiff in the above entitled action.

I have examined the papers on file in the office of the Clerk of the County of New York in the case of *Eugene T. Singer* v. *Yokohama Specie Bank, Ltd.* Attached to the affidavit of Benjamin Hinerfeld, sworn to on January 19, 1944, in support of a motion for summary judgment made in said action by the defendant, there is attached as Exhibit C to said affidavit a copy of a letter dated October 29, 1942, from the Federal Reserve Bank
570 of New York to The Yokohama Specie Bank, Ltd., New York Agency, c/o Superintendent of Banks of the State of New York, a copy of which is hereto annexed and marked Exhibit A.

Also attached to said affidavit as Exhibit B thereto is a copy of a license issued by the Secretary of the Treasury to the Superintendent of Banks of the State of New York, under the authority of Executive Order No. 8389, as amended, and the regulations and rulings issued thereunder, which license bears No. NY-338836-SU. A copy thereof is annexed hereto and marked Exhibit B.

Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 571

I have read and am familiar with the following: Executive Order No. 8389, as amended; Alien Property Custodian Supervisory Order No. 27; Vesting Order of the Alien Property Custodian No. 915. Annexed hereto and marked Exhibits C, D and E, respectively, are true copies thereof.

WILLIAM P. LEARY.

(Sworn to before Edna H. Parker, January 21, 1946.) 572

573

574 **Exhibit A, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

Received
Nov. 2 1942
Supt. of Banks
State of N. Y.
Broadway, N. Y.

FEDERAL RESERVE BANK OF NEW YORK

575 Fiscal Agent of the United States

October 29, 1942

Yokohama Specie Bank, Ltd., New York Agency
c/o Supt. of Banks of the State of New York
80 Centre Street
New York, New York

Dear Sirs:

576 Reference is made to Supervisory Order No. 27, executed on September 23, 1942, by the Alien Property Custodian.

In view of such order, you are authorized by the Treasury Department, so far as Executive Order No. 8389, as amended, is concerned, to engage in any transaction on or after October 29, 1942, which might be engaged in without a specific license of the Treasury Department by a person who is not a national of any blocked country.

License No. NY 338836-SU is hereby revoked insofar as it applied to Yokohama Specie Bank, Ltd., New York Agency.

Exhibit A, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 577

It is suggested that you communicate with the office of the Alien Property Custodian concerning the applicability to your enterprise of any orders, rulings or regulations of such office.

Very truly yours,

per pro

M. FUELLING 578
Foreign Property
Control Department

579

EXHIBIT E

[Vesting Order 9151]

THE YOKOHAMA SPECIE BANK, LTD. (NEW YORK)

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that The Yokohama Specie Bank, Ltd., a Japanese corporation, Tokyo, Japan, is a national of a designated enemy country (Japan);

2. Finding that said The Yokohama Specie Bank, Ltd., has an established agency or branch office at New York, New York, engaged in the conduct of business within the United States and therefore is, to that extent, a business enterprise within the United States;

3. Finding that the property of such New York agency of said The Yokohama Specie Bank, Ltd., is in the process of administration by the Superintendent of Banks of the State of New York acting under judicial supervision of the Supreme Court of the State of New York;

4. Finding, therefore, that the property described as follows:

The excess proceeds of the business and property in the State of New York of the Yokohama Specie Bank, Ltd., in the possession of the Superintendent of Banks of the State of New York, or which may hereafter come into his possession under and by virtue of the Banking Law of the State of New York, including but not limited to the excess proceeds of all assets of any nature whatsoever, owned or controlled by or payable or deliverable to or held on behalf of or on account of or owing to the New York agency of said The Yokohama Specie Bank, Ltd., remaining after the payment of the claims of the creditors, accepted or established in accordance with the Banking Law of the State of New York, arising out of transactions had by them with the New York agency of said The Yokohama Specie Bank, Ltd. or whose names appear as creditors on the books of such agency, together with interest on such claims and the expenses of liquidation,

is property within the United States owned or controlled by a national of a designated enemy country (Japan), and also is property which is payable or deliverable to, or claimed by, a national of a designated enemy country (Japan) and which is in the process of administration by a person acting under judicial supervision;

5. Determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of the aforesaid designated enemy country (Japan);

6. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise, and

7. Deeming it necessary in the national interest;

hereby vests in the Alien Property Custodian the property described in subparagraph 4 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Nothing in this order is intended to affect the right and power of the Superintendent of Banks of the State of New York to continue to retain possession of, collect and liquidate such business, property and assets and, in the course thereof, to do such acts and perform such duties (not inconsistent herewith) as may be required or permitted to said Superintendent of Banks by and in accordance with and subject to the provisions of the Banking Law of the State of New York: *Provided, however,* That after the claims of the creditors described in subparagraph 4 hereof, together with interest thereon and the expenses of liquidation, have been paid in full, the proceeds of the remaining assets of said The Yokohama Specie Bank, Ltd. in the possession of said Superintendent of Banks shall be held for the account of and subject to the further order of the Alien Property Custodian.

The property herein vested, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian: This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national", "designated enemy country" and "business enterprise within the United States" as used herein shall have the meanings prescribed in section 10 of said Executive Order.

Executed at Washington, D. C., on February 15, 1943.

[SEAL] LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 43-3032; Filed, February 25, 1943; 10:37 a. m.]

580 **Exhibit B, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

License No. N. Y. 338836-SU

Date: January 14, 1942

LICENSE

(Granted Under the Authority of Executive Order No. 8389 of April 10, 1940, as Amended,
581 and the Regulations and Rulings Issued Thereunder)

To: William R. White, as Superintendent of Banks of the State of New York (1)

Name of Licensee

80 Centre Street, New York, New York

Address of Licensee

582 Sirs:

1. Pursuant to your application of January 5, 1942, the following transaction is hereby licensed:

(See Reverse Side)

2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, among others, that you will comply in all respects with Execu-

Exhibit B, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

583

tive Order No. 8389 of April 10, 1940, as amended, the Regulations and Rulings issued thereunder and the terms of this license.

3. The licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank through which the license was issued, the Postmaster at the place of mailing or the Collector of Customs at the port of exportation.

584

4. This license is not transferable, is subject to the provisions of Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder and may be revoked or modified at any time in the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

585

Issued by direction and on behalf of the Secretary of the Treasury:

FEDERAL RESERVE BANK OF NEW YORK
per pro C. D. BLAUVELT

586 *Exhibit B, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

The Act of October 6, 1917, as amended, provides in part as follows;

" * * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000. or, if a natural person, may be imprisioned for not more than two years, or both; and any officer, 587 director, or agent of any corporation who knowingly participates in such violation may be punished by a fair fine, imprisonment or both."

Note: If this license covers gold in any form the provisions of the Provisional Regulations issued under the Gold Reserve Act of 1934 must also be complied with.

REVERSE SIDE.

You are hereby authorized to make payments to depositors, effect the sale of securities and delivery of collateral, make payments of salaries 588 and other expenses and to perform all other acts appropriate to the orderly liquidation of the assets property and business in the State of New York and the following Foreign Banking Corporations in accordance with the laws of the State of New York:

Bank of Chosen
Bank of Taiwan, Ltd.
Mitsubishi Bank, Limited
Mitsui Bank, Limited
The Sumitomo Bank, Limited

Exhibit B, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion. 589

Yokohama Specie Bank, Limited
Banca Commerciale Italiana
Banco di Napoli
Banco di Roma
Credito Italiano

This license is issued subject to the following stipulations:

1. All payments to countries designated in the Order or nationals thereof, shall be made to domestic banks for credit to the blocked accounts of such nationals. 590

2. Transactions involving a blocked national other than the bank in liquidation shall be effected only as authorized by a general or specific license.

3. Any distribution on account of stock ownership shall only be made pursuant to a specific license.

591

Exhibit C, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

Copy of Executive Order 8389 issued under Section 5(b) of the Act of October 6, 1917, as amended.

592 **Exhibit D, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.**

OFFICE OF ALIEN PROPERTY CUSTODIAN
Washington

Supervisory Order Number 27

Re: Yokohama Specie Bank, Ltd. (New York).

593 Supervisory Order Number 10, issued by the undersigned under date of August 27, 1942, is hereby rescinded and canceled and the order herein contained is hereby issued in lieu thereof.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation, finding:

(a) That Yokohama Specie Bank, Ltd., a Japanese corporation, Tokyo, Japan, which has an established branch office at New York, New York, engaged in the conduct of business
594 within the United States, is a business enterprise within the United States which is a national of a designated enemy country (Japan); and

(b) That there is property which is payable or deliverable to, or claimed by, the aforesaid Yokohama Specie Bank, Ltd., or its said New York branch, which is in the process of administration by a person (namely, the Superintendent of Banks of the State of New York) acting under judicial supervision (namely, that of the Supreme Court of the

Exhibit D, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

595

State of New York) within the meaning of Section 2-f of the aforesaid Executive Order;

and determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of such designated enemy country, and having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise, and deeming it necessary in the national interest, hereby undertakes the supervision to the extent deemed necessary or advisable from time to time by the undersigned of such New York branch of said business enterprise and of all property of any nature whatsoever owned or controlled by, payable or deliverable to, or held on behalf of or on account of or owing to, said branch, without, however, vesting such business enterprise or any of its capital stock or any of its property or assets.

596

The action herein taken shall not be deemed to limit the powers of the Alien Property Custodian to vary the extent of such supervision or to terminate the same, or to indicate that compensation will not be paid, if and when it should be determined that the extent of such supervision should be changed or that such supervision should be terminated or that compensation should be paid.

597

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order (but not including any claim of any nature against Yokohama Specie Bank, Ltd., or its said New York branch, which any

598 *Exhibit D, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.*

claimant is now or may hereafter be entitled to file with the Superintendent of Banks of the State of New York) may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-6, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the
599 existence, validity or right to allowance of any such claim.

The terms "national", "designated enemy country" and "business enterprise within the United States" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Executed at Washington, D. C. on September 28, 1942.

(Signed) LEO T. CROWLEY

LEO T. CROWLEY
600 Alien Property Custodian

(OFFICIAL SEAL)

Exhibit E, Annexed to Affidavit of William P. Leary, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

(See opposite ☞)

604

Reply Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

[Same Title.]

State of New York,
County of New York, } ss.:

Walter J. Holzka, being duly sworn, deposes and says:

605 I am an attorney and counsellor at law associated with the firm of Winthrop, Stimson, Putnam & Roberts, attorneys for the plaintiff in the above entitled action. I have read and am familiar with General Ruling No. 12 issued by the Treasury Department under Executive Order No. 8389, as amended, Executive Order No. 9193, Sections 3(a) and 5(b) of the Trading with the Enemy Act, as Amended by the First War Powers Act, 1941, Relating to Foreign Funds Control. Annexed hereto and marked "Exhibit A" is a true copy of said General Ruling No. 12.

606 The proof of claim filed herein on behalf of plaintiff (answering affidavit of Deputy Superintendent Hinerfeld, Exhibit C) does not include in the itemization contained therein, Letter of Credit No. 12-5515 in the amount of $3,701. The omission of this item was through an inadvertence arising as follows:

On February 6, 1941 the New York Agency of The Yokohama Specie Bank advised Irving Trust Company that the Agency had been notified by its Osaka office that the beneficiary of that credit had refused to accept it because of a disagreement between the buyer and seller on a contract, and it authorized Irving Trust Company to debit its account as a reimbursement for the account of

Exhibit A, Annexed to Reply Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

Banque Mellie Iran. Irving Trust Company on the same date cabled plaintiff that it was crediting this amount to its account on account of the disagreement of the buyer and seller. On March 18, 1941 the Irving Trust Company received instructions from the plaintiff to remit this same amount for the credit of The Yokohama Specie Bank, Osaka, as it understood that an agreement had been made between the buyer and seller. The amount was credited to the New York Agency by the Irving Trust Company on that date.

When the Irving Trust Company furnished the details of the plaintiff's claim to plaintiff's attorneys for the purpose of having the claim prepared and filed with the Superintendent of Banks, it did not include this item, believing that it had been finally repaid in consequence of the instructions received on February 6, 1941, not noticing that this same amount had been recredited to the New York Agency of The Yokohama Specie Bank for the account of its Osaka branch on March 18, 1941.

WALTER J. HOLZKA.

(Sworn to before Edna H. Parker March 22, 1946.)

Exhibit A, Annexed to Reply Affidavit of Walter J. Holzka, Read in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-Motion.

Copy of General Ruling No. 12 issued on April 21, 1942 under Executive Order 8389 as amended.

610 **Summons.**

SUPREME COURT OF THE STATE OF NEW YORK.

COUNTY OF NEW YORK.

BANQUE MELLIÉ IRAN,
Plaintiff,
against
THE YOKOHAMA SPECIE BANK, LTD., ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as
611 Liquidator of the Business and Property of THE YOKOHAMA SPECIE BANK, LTD., in the State of New York, and LEO T. CROWLEY, as Alien Property Custodian,
Defendants.

Plaintiff Designates New York County as the Place of Trial.

To the above named Defendants:

YOU ARE HEREBY SUMMONED, to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with
612 this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, August 6, 1943.

WINTHROP, STIMSON, PUTNAM & ROBERTS,
Attorneys for Plaintiff,
Office and Post Office Address,
32 Liberty Street,
Borough of Manhattan,
New York City.

613

Complaint.

[Same Title.]

Plaintiff, by its attorneys, Winthrop, Stimson, Putnam & Roberts, complaining of the defendants, alleges upon information and belief:

For a First Cause of Action:

First—Plaintiff is a banking corporation organized and existing under and by virtue of the laws of Iran. 614

Second—At all times hereinafter mentioned, defendant, The Yokohama Specie Bank, Ltd. was and still is a foreign banking corporation, to wit: a corporation organized and existing under and by virtue of the laws of Japan.

Third—At all times hereinafter mentioned, defendant, The Yokohama Specie Bank, Ltd. maintained an agency in the City, County and State of New York, and through said agency was engaged in the conduct of the banking business 615 within the State of New York.

Fourth—Defendant, Elliott V. Bell, is the duly appointed and acting Superintendent of Banks of the State of New York, having succeeded William R. White as such Superintendent of Banks of the State of New York.

Fifth—Heretofore, and at divers times between the 26th day of February, 1941 and the 22nd day of July, 1941, plaintiff caused to be paid in New York City to the said New York agency of defend-

ant, The Yokohama Specie Bank, Ltd., various sums of money, aggregating $113,461.27 as follows:

February 26, 1941	$ 3,200.00
February 26, 1941	1,100.00
March 4, 1941	1,450.00
March 4, 1941	255.97
April 9, 1941	1,739.53
April 17, 1941	95,137.57
May 21, 1941	1,900.00
617 May 29, 1941	200.00
June 2, 1941	1,252.50
June 2, 1941	607.50
June 26, 1941	858.65
July 2, 1941	501.55
July 11, 1941	500.00
July 22, 1941	4,760.00

Defendant by its New York agency received and accepted said sums, and at the request of the plaintiff promised and agreed that it would open commercial credits for like amounts with certain
618 branches of the defendant located in Japan and that in the event that the said commercial credits were not utilized, it would refund to plaintiff the sums so paid to it, or such parts thereof as were not utilized.

Sixth—Thereafter the said commercial credits were not utilized prior to the expiration thereof according to their terms, and expired prior to December 2, 1941, excepting that the sum of $1,000 was withdrawn against the payment of February 26, 1941 of $3,200, and defendant, The Yokohama Specie Bank, Ltd., thereupon became obligated to refund the balance amounting to $112,461.27 of said sums to the plaintiff.

619

Seventh—Thereafter, and prior to December 2, 1941, defendant, The Yokohama Specie Bank, Ltd., notified and instructed its New York agency to refund the same to plaintiff, and the said New York agency of said defendant notified plaintiff through its agent, Irving Trust Company of New York, to that effect.

Eighth—On or about the 8th day of December, 1941, and before the said New York agency of defendant, The Yokohama Specie Bank, Ltd., refunded or paid said sum of $112,461.27 or any 620
part thereof to plaintiff, the Superintendent of Banks of the State of New York took possession of the business and property in New York of the aforesaid defendant, The Yokohama Specie Bank, Ltd., pursuant to the provisions of the Banking Law of the State of New York, and particularly Section 606 thereof.

Ninth—On or about the 25th day of August, 1942, by a notice dated on said date, the Superintendent of Banks as Liquidator of the business and property of the defendant, The Yokohama Specie Bank, Ltd., within the State of New York, 621
gave notice to creditors of said defendant to present to and file claims with him against the said The Yokohama Specie Bank, Ltd., on or before the 23rd day of November, 1942.

Tenth—Pursuant to said notice plaintiff herein did on November 4, 1942, duly present its claim based upon the facts hereinabove alleged to the Superintendent of Banks of the State of New York as Liquidator aforesaid in the amount of $112,461.27.

622 *Complaint.*

Eleventh—Said claim of the plaintiff herein arose out of transactions had by plaintiff with the New York agency of defendant, The Yokohama Specie Bank, Ltd., and plaintiff's name appears as a creditor on the books of said agency. Pursuant to Section 606 of the Banking Law of the State of New York, said claim is preferred against the assets of defendant, The Yokohama Specie Bank, Ltd., in this State.

Twelfth—Said claim was duly filed with the
623 Superintendent of Banks, liquidator aforesaid, and contained therein a demand in writing for priority of payment of the same.

Thirteenth—On the 11th day of February, 1943, the defendant, the Superintendent of Banks of the State of New York, liquidator aforesaid, rejected plaintiff's said claim and notified the plaintiff in writing to that effect.

Fourteenth—Eighty days have elapsed since the expiration of the time for filing of claims
624 against the said defendant, The Yokohama Specie Bank, Ltd., with said Superintendent of Banks of the State of New York as required by the notice aforesaid.

Fifteenth—This action was instituted after the expiration of the time within which the Superintendent of Banks of the State of New York was required to accept or reject claims filed with him as against said defendant, The Yokohama Specie Bank, Ltd., pursuant to the notice aforesaid and within six months thereafter.

Complaint.

Sixteenth—No part of the aforesaid sums due and owing by the defendant, The Yokohama Specie Bank, Ltd., through its New York agency, amounting to $112,461.27, has been paid to the plaintiff, notwithstanding that due demand for the payment of same has been made.

Seventeenth—Defendant, Leo T. Crowley, as Alien Property Custodian, is made a party to this action by reason of any interest that he may have or claim in or to the assets of the defendant, The Yokohama Specie Bank, Ltd., in the possession of the Superintendent of Banks of the State of New York, under any statute of the United States or any regulation or order promulgated pursuant thereto.

For A Second Cause of Action

Eighteenth—Plaintiff repeats and realleges each and every allegation contained in paragraphs "First", "Second", "Third" and "Fourth" hereof with the same force and effect as if the same were set forth at length herein.

Nineteenth—Prior to the 2nd day of December, 1941, defendant, The Yokohama Specie Bank, Ltd., was indebted to plaintiff upon a balance of account for monies received by said defendant's New York agency for the purpose of opening certain commercial credits in Japan; that on or about said December 2, 1941 an account was taken and stated between plaintiff and defendant, The Yokohama Specie Bank, Ltd., through its New York agency; and that upon said statement the

628 *Complaint.*

balance of $112,205.30 was found due to the plaintiff from the defendant, which sum defendant, through its New York agency, promised and agreed to pay and no part of which has been paid.

Twentieth—On or about the 8th day of December, 1941 and before the said New York Agency of defendant, The Yokohama Specie Bank, Ltd. paid said sum of $112,205.30, or any part thereof, to plaintiff, the Superintendent of Banks of the State of New York took possession of the business and property in New York of the aforesaid 629 defendant, The Yokohama Specie Bank, Ltd., pursuant to the provisions of the Banking Law of the State of New York, and particularly Section 606 thereof.

Twenty-first—Plaintiff repeats and realleges each and every allegation contained in paragraphs "Eighth" and "Ninth" hereof with the same force and effect as if the same were set forth at length herein.

630 *Twenty-second*—Pursuant to said Notice, plaintiff did on November 4, 1942 duly present a claim, which included its claim based upon the facts herein alleged, with the Superintendent of Banks of the State of New York.

Twenty-third—Plaintiff repeats and realleges each and every allegation contained in paragraphs "Eleventh", "Twelfth", "Thirteenth", "Fourteenth", "Fifteenth" and "Seventeenth" hereof with the same force and effect as if the same were set forth at length herein.

631

Twenty-fourth—No part of the aforesaid sums due and owing by the defendant, The Yokohama Specie Bank, Ltd., through its New York agency, amounting to $112,205.30 has been paid to the plaintiff notwithstanding that due demand for payment of said sum has been made.

For a Third Cause of Action:

Twenty-fifth—Plaintiff repeats and realleges each and every allegation contained in paragraphs "First", "Second", "Third" and "Fourth" hereof with the same force and effect as if the same were set forth at length herein.

632

Twenty-sixth—Heretofore and on or about March 20, 1941 plaintiff caused to be paid in New York City to the New York agency of defendant, The Yokohama Specie Bank, Ltd., the sum of $3,701. Defendant by its New York agency received and accepted said sum, and at the request of plaintiff promised and agreed that it would open commercial credits for a like amount with one of the branches of defendant located in Japan, and that in the event the said commercial credit was not utilized it would refund to plaintiff the sum so paid to it, or such part thereof as was not utilized.

633

Twenty-seventh—Thereafter the said commercial credit was not utilized prior to the expiration thereof according to its terms and expired prior to November 26, 1941 and defendant, The Yokohama Specie Bank, Ltd., thereupon became obligated to refund the said sum of $3,701.

634 *Complaint.*

Twenty-eighth—On or about the 8th day of December, 1941, and before the said New York Agency of defendant, The Yokohama Specie Bank, Ltd., refunded or paid said sum of $3,701 or any part thereof to plaintiff, the Superintendent of Banks of the State of New York took possession of the business and property in New York of the aforesaid defendant, The Yokohama Specie Bank, Ltd., pursuant to the provisions of the Banking Law of the State of New York, and particularly Section 606 thereof. Neither said
635 sum of $3,701 nor any part thereof has at any time been refunded or paid to plaintiff.

Twenty-ninth—Said claim of the plaintiff herein arose out of transactions had by plaintiff with the New York Agency of defendant, The Yokohama Specie Bank, Ltd. and plaintiff's name appears as a person whose account is payable as shown by the books and records of said agency and plaintiff's claim based upon said account payable has not been accepted by defendant, Superintendent of Banks, as Liquidator aforesaid. Pur-
636 suant to Section 606 of the Banking Law of the State of New York said claim is preferred against the assets of defendant, The Yokohama Specie Bank, Ltd.

Thirtieth—Plaintiff repeats and realleges each and every allegation contained in paragraph "Seventeenth" with the same force and effect as if the same were set forth at length herein.

WHEREFORE, plaintiff demands judgment against the defendants, The Yokohama Specie Bank, Ltd., and Elliott V. Bell, Superintendent of Banks of

637

the State of New York, as Liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York, for the sum of $116,162.27, with interest thereon from the 2nd day of December, 1941, and that it be adjudged that the plaintiff's claim for said amount shall be preferred in accordance with Section 606 of the Banking Law against the assets of said The Yokohama Specie Bank, Ltd. in this State and in possession of the defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as

638

Liquidator, without prejudice to plaintiff's right to share in the other assets of such corporation, together with the costs and disbursements of this action.

WINTHROP, STIMSON, PUTNAM & ROBERTS,
Attorneys for Plaintiff,
Office and Post Office Address:
32 Liberty Street,
Borough of Manhattan,
City of New York.

639

(Verified by Allen T. Klots, a member of the firm Winthrop, Stimson, Putnam & Roberts, on August 6, 1943.)

640 **Answer of the Defendant Superintendent of Banks.**

[Same Title]

The defendant The Yokohama Specie Bank, Ltd., New York Agency, by Elliott V. Bell, Superintendent of Banks of the State of New York, also sued herein as "The Yokohama Specie Bank, Ltd.", by Edward Feldman, its attorney, answering the complaint herein alleges:

641 1. Admits that The Yokohama Specie Bank, Ltd. was prior to December 8, 1941, duly licensed by the Superintendent of Banks of the State of New York to transact a limited banking business in the State of New York, and maintained an agency for the transaction of such business in the City of New York, but, except as so admitted, denies each and every allegation contained in the paragraph of the complaint marked "Third".

642 2. Admits that the New York Agency of The Yokomaha Specie Bank, Ltd. received from the Irving Trust Company, as agent of the plaintiff, the various sums of money set forth in the complaint in paragraph "Fifth" thereof, but, except as so admitted, denies each and every allegation contained in paragraph of the complaint marked "Fifth".

3. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs of the complaint marked "Sixth" and "Twenty-seventh".

4. Admits that prior to December 8, 1941, the New York Agency of The Yokohama Specie Bank,

Answer of the Defendant Superintendent of Banks. 643

Ltd. received telegraphic instructions from the Osaka, Nagoya and Tokyo offices of The Yokohama Specie Bank, Ltd. to pay to the Irving Trust Company for the account of the plaintiff various sums of money amounting in total to $112,205.30, and admits that the New York Agency of The Yokohama Specie Bank, Ltd. prior to December 8, 1941, advised the Irving Trust Company of the receipt of the said instructions, but, except as so admitted, denies each and every allegation contained in the paragraph of the complaint marked 644
"Seventh".

5. Admits that on the 8th day of December, 1941, the Superintendent of Banks of the State of New York took possession of the business and property in New York of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, but, except as so admitted, denies each and every allegation contained in the paragraph of the complaint marked "Eighth", "Twentieth", and "Twenty-eighth".

645

6. Admits that on or about the 4th day of November, 1942, proof of claim #958 in the amount of $112,461.27 was filed with the Superintendent of Banks in the matter of the liquidation of the business and property in New York of The Yokohama Specie Bank, Ltd., but except as so admitted, denies each and every allegation contained in the paragraphs of the complaint marked "Tenth" and "Twenty-second".

7. Denies each and every allegation contained in the paragraphs of the complaint marked "Eleventh", "Nineteenth" and "Twenty-ninth".

646 *Answer of the Defendant Superintendent of Banks.*

8. Admits that proof of claim #958 was filed with the Superintendent of Banks in the matter of the liquidation of the business and property in New York of The Yokohama Specie Bank, Ltd., and admits that said proof of claim contained therein a demand in writing for a priority of payment, but except as so admitted denies each and every allegation contained in the paragraph of the complaint marked "Twelfth".

647 9. Admits that the New York Agency of The Yokohama Specie Bank, Ltd., has not paid to the plaintiff the sum of $112,461.27, but except as so admitted denies each and every allegation contained in the paragraph of the complaint marked "Sixteenth".

10. Except as previously admitted herein, denies each and every allegation contained in the paragraphs of the complaint marked "Eighteenth", "Twenty-first", "Twenty-third", "Twenty-fifth" and "Thirtieth".

648 11. Admits that the New York Agency of The Yokohama Specie Bank, Ltd., has not paid to the plaintiff the sum of $112,205.30, but except as so admitted denies each and every allegation contained in the paragraph of the complaint marked "Twenty-fourth".

12. Admits that the New York Agency of The Yokohama Specie Bank, Ltd., received from the Irving Trust Company, as agent of the plaintiff, the sum of $3,701 on or about the 20th day of March, 1941, but except as so admitted denies

each and every allegation contained in the paragraph of the complaint marked "Twenty-sixth".

As and for a first, separate and complete defense to all the causes of action set forth in the complaint herein, defendant alleges:

13. That at all the times hereinafter mentioned, The Yokohama Specie Bank, Ltd., was and still is a banking corporation duly incorporated under the laws of the Empire of Japan, and was prior 650
to December 8, 1941, duly licensed by the Superintendent of Banks to transact a limited banking business in the State of New York, and maintained an agency for the transaction of such business in the State of New York.

14. On the 8th day of December, 1941, pursuant to Section 606 of the Banking Law of the State of New York, the Superintendent of Banks of the State of New York duly took possession of the business and property in New York of The Yokohama Specie Bank, Ltd., including the New 651
York Agency thereof, for the purpose of liquidating the same, as provided in the Banking Law of the State of New York, and is still engaged in said liquidation. The Superintendent of Banks of the State of New York, as liquidator of the New York Agency of The Yokohama Specie Bank, Ltd., is not authorized to represent The Yokohama Specie Bank, Ltd., a Japanese banking corporation, having its head office in the Empire of Japan and does not appear herein for said foreign corporation.

652 *Answer of the Defendant Superintendent of Banks.*

15. Upon information and belief, that on and prior to December 8, 1941, the plaintiff, pursuant to certain letters of credit issued and opened by it in favor of various beneficiaries in Japan, arranged with the Irving Trust Company as its agent to pay to the Osaka, Nagoya and Tokyo offices of The Yokohama Specie Bank, Ltd., in Japan, certain sums of money through the medium of cable transfers of credit.

653 16. Upon information and belief, that on or about the dates mentioned in paragraphs "Fifth" and "Twenty-sixth" of the complaint herein, the plaintiff, through its agent, the Irving Trust Company, delivered the various sums of money described in paragraphs "Fifth" and "Twenty-sixth" of the complaint to the New York Agency of The Yokohama Specie Bank, Ltd., for the establishment by cable of certain transfers of credit with the Osaka, Nagoya and Tokyo offices of The Yokohama Specie Bank, Ltd., for the account of the plaintiff, in connection with the said
654 letters of credit mentioned in paragraph "15" of this answer.

17. That the New York Agency of The Yokohama Specie Bank, Ltd. did on and prior to December 8, 1941, establish by cable transfers of credit with the Osaka, Nagoya and Tokyo offices of The Yokohama Specie Bank, Ltd. for the account of the plaintiff, in connection with the various letters of credit mentioned in paragraph of this answer marked "15".

18. That the New York Agency of The Yokohama Specie Bank, Ltd. duly performed all the

terms and conditions on its part to be performed with respect to the establishment of the said transfers of credit for the account of the plaintiff as hereinabove described.

As and for a second, separate and complete defense to all the causes of action set forth in the complaint herein, defendant alleges:

19. Repeats and reiterates each and every allegation contained in the paragraphs of this 656
answer marked "13" and "14" with the same force and effect as if the same were hereinafter set forth at length.

20. Pursuant to the provisions of the Banking Law of the State of New York and more particularly the provisions of Section 606, Subdivision 4 thereof, the only claims which may be paid out of the assets in New York of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, are (1) claims arising out of transactions had with the New York Agency, and (2) claims of 657
persons whose names appear as creditors on the books of such New York Agency, and no other claimants are entitled to share and participate in the assets in New York of The Yokohama Specie Bank, Ltd., including its New York Agency.

21. Pursuant to the authority of the "Trading with the Enemy Act" as amended, and Executive Order #9095 as amended, the Alien Property Custodian, by Supervisory Order #27, undertook the supervision of the liquidation of the assets, property and business in the State of New York

of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, and authorized the Superintendent of Banks to retain possession of and liquidate the assets, property and business in the State of New York of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, and in the course of such liquidation, to do such acts and perform such duties as may be required of or permitted to said Superintendent of Banks by and in accordance with and subject to
659 the provisions of the Banking Law of the State of New York.

22.—Pursuant to the authority of the "Trading with the Enemy Act" and Executive Order #9095 as amended, the Alien Property Custodian by Vesting Order #915 dated the 15th day of February 1943, has vested in the interest of the United States of America, the excess proceeds of the business and property in the State of New York of The Yokohama Specie Bank, Ltd., in the possession of the Superintendent of Banks of the
660 State of New York, remaining after payment of claims described in paragraph "20" of this Answer.

23. The plaintiff's name does not appear as a creditor on the books of the New York Agency of The Yokohama Specie Bank, Ltd., and the claim of the plaintiff does not arise out of any transaction had by the plaintiff with the New York Agency of The Yokohama Specie Bank, Ltd., within the meaning of the provisions of the Banking Law and more particularly within the meaning of the provisions of Section 606, Subdivision 4.

Answer of the Defendant Superintendent of Banks. 661

24. The plaintiff is not entitled to share as a claimant in the New York assets of The Yokohama Specie Bank, Ltd., including the New York Agency thereof.

As and for a third, separate and complete defense to the First Cause of Action set forth in the complaint herein, defendant alleges:

25. Repeats and reiterates each and every allegation contained in the paragraphs of this answer marked "13" and "14" with the same force and effect as if the same were hereinafter set forth at length. 662

26. On December 8, 1941, a state of war was declared to exist between the United States of America and the Empire of Japan.

27. Upon information and belief, and by reason of the declaration of a state of war between the Empire of Japan and the United States of America, the telegraphic instructions received by The Yokohama Specie Bank, Ltd., New York Agency, from the Osaka, Nagoya and Tokyo offices of The Yokohama Specie Bank, Ltd., Japan, and referred to in paragraph "4" of the answer herein, were rescinded, cancelled, revoked, and annulled. 663

As and for a fourth, separate and complete defense to the First Cause of Action set forth in the complaint herein, defendant alleges:

28. Repeats and reiterates each and every allegation contained in the paragraphs of this answer marked "13" and "14" with the same force and effect as if the same were hereinafter set forth at length.

664 *Answer of the Defendant Superintendent of Banks.*

29. That pursuant to Section 5(b) of the Act of Congress of October 6, 1917, known as the "Trading with the Enemy Act" and Executive Order #8389 as amended, issued by the President of the United States pursuant thereto, and pursuant to all the other statutes and orders in such case made and provided and applicable hereto, The Yokohama Specie Bank, Ltd., New York Agency, was at all times after the 26th day of July, 1941, and still is, prohibited from performing any acts and making any payment to the plaintiff with respect to the alleged telegraphic instructions pleaded in the complaint unless specifically authorized by the Secretary of the Treasury of the United States of America; upon information and belief, no such authorization or license was granted by the Secretary of the Treasury and furnished by the plaintiff to the New York Agency of The Yokohama Specie Bank, Ltd., at any time prior to the 8th day of December, 1941, the date when the Superintendent of Banks of the State of New York suspended the operations of said Agency and took possession of its business, assets and affairs for the purpose of liquidation.

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666

30. That pursuant to Section 5(b) of the Act of Congress of October 6, 1917, known as the "Trading with the Enemy Act" and Executive Order #8389 as amended, issued by the President of the United States pursuant thereto, and pursuant to all the other statutes and orders in such case made and provided and applicable thereto, The Yokohama Specie Bank, Ltd., New York Agency, was at all times from the 26th day of July, 1941, to December 8, 1941, and still is prohibited from making any delivery or payment to,

667

or engaging in any foreign exchange transaction with the plaintiff, or with anyone on its behalf unless specifically authorized by the Secretary of the Treasury; upon information and belief, no such authorization was obtained by or on behalf of the plaintiff, nor did the plaintiff ever apply for and obtain and deliver to The Yokohama Specie Bank, Ltd., New York Agency, such authorization, consent and license.

668

31. That no liability against the New York Agency of The Yokohama Specie Bank, Ltd., would ever accrue until the plaintiff obtained from the Secretary of the Treasury of the United States of America, a license and authorization permitting The Yokohama Specie Bank, Ltd., New York Agency, to make payment under and pursuant to the alleged telegraphic instructions received by The Yokohama Specie Bank, Ltd., New York Agency, from the Osaka, Nagoya and Tokyo offices in Japan of The Yokohama Specie Bank, Ltd.

669

32. That by reason of the aforementioned facts, the claim of the plaintiff, if any, was uncertain and contingent on the 11th day of December, 1941, the 23rd day of November, 1942, the 11th day of August, 1943, and at the time of the commencement of the action herein, and that at all of the above mentioned times and at the present time, it is and was uncertain and contingent whether said license would ever be granted; that the plaintiff's claim as set forth in the complaint herein is contingent and uncertain and cannot be definitely ascertained so as to constitute a liability against The Yokohama Specie Bank, Ltd., New York Agency, in liquidation.

670 *Answer of the Defendant Superintendent of Banks.*

33. That no part of the moneys claimed in the complaint herein was due and payable on December 11, 1941, November 23, 1942, August 11, 1943, or on the date of the commencement of this action.

34. That no part of the plaintiff's alleged claim was in existence on December 11, 1941, November 23, 1942, August 11, 1943, or on the date of the commencement of this action, and it was not
671 known and could not be known or ascertained at any of said dates or times whether the plaintiff's alleged claim would ever come into existence and/or mature, nor was it known nor could it be ascertained at any of such dates or times what the amount of such claim would be.

WHEREFORE the defendant THE YOKOHAMA SPECIE BANK, LTD., New York Agency, by ELLIOTT V. BELL, Superintendent of Banks of the State of New York, also sued herein as "THE YOKOHAMA SPECIE BANK, LTD.," demands judgment, dismissing the complaint herein, together with the
672 costs and disbursements of this action.

EDWARD FELDMAN,
Attorney for defendant The Yokohama Specie Bank, Ltd., New York Agency, by Elliott V. Bell, Superintendent of Banks of the State of New York, also sued herein as "The Yokohama Specie Bank, Ltd.,"
Office and P. O. Address:
526 Broadway,
Borough of Manhattan, #12,
City of New York.

(Verified by Charles R. Murray, Special Deputy Superintendent of Banks, on October 8, 1943.)

673

Demand by Superintendent of Banks for Bill of Particulars.

[Same Title.]

Sir:

Please take notice, that the defendant, Elliott V. Bell, Superintendent of Banks of the State of New York as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York, also sued herein as "The Yokohama Specie Bank, Ltd.", demands that the 674
plaintiff serve upon the undersigned a verified bill of particulars of the causes of action set forth in the complaint herein within ten (10) days of the date of service herein with respect to the following matters:

1. With respect to paragraph "Fifth" of the complaint:

(a) If the promise and agreement was in writing set forth a copy thereof; if oral, set forth the substance thereof.

(b) Set forth the particular office, agency 675
or branch of the Yokohama Specie Bank which made said promise and agreement.

(c) Set forth the name of the person, agent, employee or officer who on behalf of the Yokohama Specie Bank entered into said agreement and made said promise.

(d) Set forth the date or dates when said promise and agreement was made.

(e) Set forth the name of the person with whom on behalf of the plaintiff said promise and agreement was made.

676 *Demand by Superintendent of Banks for Bill of Particulars.*

2. With respect to paragraph "Sixteenth" of the complaint:

(a) Set forth the date when the demand was made.

(b) If said demand was in writing, set forth the copy thereof; if oral, set forth the substance thereof.

(c) Set forth the name of the person, who,
677 on behalf of the plaintiff made said demand.

(d) Set forth the name of the person, agent, employee or officer of the Yokohama Specie Bank, Ltd., on whom said demand was made.

3. With respect to paragraph "Nineteenth" of the complaint:

(a) Set forth an exact copy of the alleged statement of account.

(b) Set forth the name of the person with
678 whom on behalf of the plaintiff said account was taken and stated.

(c) Set forth the name of the person, agent, employee or officer of the Yokohama Specie Bank, Ltd. by whom said account was alleged to have been stated.

(d) If said promise and agreement was in writing, set forth a copy thereof; if oral, set forth the substance thereof.

(e) Set forth the date of the alleged promise.

Demand by Superintendent of Banks for Bill of Particulars. 679

(f) Set forth the name of the person, agent, employee or officer, who, on behalf of the Yokohama Specie Bank, Ltd. made said promise and agreement.

(g) Set forth the name of the person to whom on behalf of the plaintiff said promise and agreement was made.

(h) Set forth the relationship of said person to the plaintiff.

680

(4) With respect to paragraph "Twenty-fourth" of the complaint:

(a) Set forth the date when the demand was made.

(b) If said demand was in writing, set forth a copy thereof; if oral, set forth the substance thereof.

(c) Set forth the name of the person, who, on behalf of the plaintiff made said demand.

(d) Set forth the name of the person, agent, employee or officer of the Yokohama Specie Bank, Ltd., on whom said demand was made. 681

5. With respect to paragraph "Twenty-sixth" of the complaint:

(a) If the promise and agreement was in writing, set forth a copy thereof; if oral, set forth the substance thereof.

(b) Set forth the particular office, agency or branch of the Yokohama Specie Bank which made said promise and agreement.

682 *Demand by Superintendent of Banks for Bill of Particulars.*

(c) Set forth the name of the person, agent, employee or officer who on behalf of the Yokohama Specie Bank entered into said agreement and made said promise.

(d) Set forth the date or dates when said promise and agreement was made.

(e) Set forth the name of the person with whom on behalf of the plaintiff said promise and agreement was made.

683

Dated: New York City, January 13, 1944.

Yours, etc.,

EDWARD FELDMAN,
Attorney for Defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York, also sued herein
684 as "The Yokohama Specie Bank, Ltd."

526 Broadway,
Borough of Manhattan,
City of New York.

To:

WINTHROP, STIMSON, PUTNAM & ROBERTS, Esqs.,
Attorneys for Plaintiff,
32 Liberty Street,
New York City.

685

Plaintiff's Bill of Particulars.

[Same Title.]

Plaintiff for its bill of particulars herein pursuant to demand therefor dated January 13, 1944, alleges, upon information and belief:

1. (a) The promise and agreement set forth in paragraph "Fifth" of the complaint was implied from the act of defendant, The Yokohama Specie Bank, Ltd., in accepting the sums of money set forth in said paragraph of the complaint numbered "Fifth" under instructions from plaintiff to apply said sums to certain credits with certain of its branches in Japan. 686

(b) (c) The New York agency of The Yokohama Specie Bank, Ltd. accepted and received said sums of money for the purpose of opening such credits.

(d) (e) Such promises and agreements were implied upon the dates shown in paragraph "Fifth" of the complaint when each of the sums therein set forth were received by the New York agency of The Yokohama Specie Bank, Ltd. under instructions to open the credits therein referred to. 687

2. (a) The demand referred to in paragraph "Sixteenth" of the complaint was made on or about December 1, 1941, and on or about November 4, 1942.

688 *Plaintiff's Bill of Particulars.*

(b) The demand made on or about December 1, 1941 was oral. The demand made on November 4, 1942 was in writing, and is proof of claim numbered 958, now on file with defendant, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York.

(c) The demand made on or about December 1, 1941, was made by Irving Trust Company; that
689 on November 4, 1942, was made by plaintiff.

(d) The plaintiff is unable to state at this time the name of the person upon whom the demand made on or about December 1, 1941, was made. The demand made on or about November 4, 1942, was made on the Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York.

3. (a) A copy of the account referred to in
690 paragraph "Nineteenth" of complaint is annexed hereto and marked "Exhibit A".

(b) Irving Trust Company, One Wall Street, New York City.

(c) The name of the agent of The Yokohama Specie Bank, Ltd. stating the account referred to in paragraph "Nineteenth" of complaint, appears upon "Exhibit A".

(d) The promise and agreement referred to in paragraph "Nineteenth" of the complaint was

691

implied from the act of the New York agency of The Yokohama Specie Bank, Ltd. in writing Exhibit A and causing the same to be sent to the Irving Trust Company.

(e) December 2, 1941.

(f) See "Exhibit A".

(g) Irving Trust Company.

(h) Banking correspondent and agent of plaintiff. 692

4. (a) November 4, 1942.

(b) Said demand is proof of claim numbered 958, now on file with defendant, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. within the State of New York.

(c) Said demand was made by plaintiff.

693

(d) Elliott V. Bell, Superintendent of Banks of the State of New York as liquidator of the business and property of The Yokohama Specie Bank, Ltd. within the State of New York.

5. (a) (b) (c) The promise and agreement referred to in paragraph "Twenty-sixth" of the complaint was implied from the act of The New York agency of The Yokohama Specie Bank, Ltd. in accepting and receiving the sum of money referred to in said paragraph under instructions to

694 *Plaintiff's Bill of Particulars.*

open with said sum commercial credits with one of its branches in Japan.

(d) (e) March 20, 1941.

Dated: New York City, March 2, 1944.

Yours, etc.,

WINTHROP, STIMSON, PUTNAM & ROBERTS
Attorneys for Plaintiff,
32 Liberty Street,
695 New York City.

To:

EDWARD FELDMAN, Esq.,
Attorney for Defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York, also sued herein as "The Yokohama Specie Bank, Ltd.,"
696 526 Broadway,
Borough of Manhattan,
City of New York.

(Verified on March 2, 1944.)

Exhibit A, Annexed to Bill of Particulars.

[Letter, dated December 2, 1941 printed at page 36, *infra*.]

Notice of Cross-Motion of Defendant Superintendent of Banks for Summary Judgment. 697

[Same Title.]

Sir:

Please take notice that upon the annexed affidavits of Benjamin Hinerfeld, Special Deputy Superintendent of Banks and Frank Kearns, both sworn to the 19th day of March, 1946, the exhibits annexed thereto and the exhibits annexed to the moving affidavits submitted in support of plaintiff's application for summary judgment, returnable March 25th, 1946, at Special Term Part 3, Supreme Court, New York County, the undersigned will, at the same time and place, move to dismiss the complaint as against the defendant, Elliott V. Bell, as Superintendent of Banks of the State of New York and The Yokohama Specie Bank, Ltd., New York Agency, in liquidation, sued herein as "The Yokohama Specie Bank Ltd.", pursuant to Rule 113 of the Rules of Civil Practice, and for such other and further relief as to the Court may seem just and proper. 698

Dated: New York, N. Y., March 19, 1946.

Yours, etc. 699

Edward Feldman,
Attorney for Defendants,
Elliott V. Bell as Superintendent of Banks and The Yokohama Specie Bank, Ltd., New York Agency, in liquidation, sued herein as "The Yokohama Specie Bank, Ltd."
Office and P. O. Address
80 Spring Street
New York 12, N. Y.

To:

Winthrop, Stimson, Putnam & Roberts, Esqs.,
Attorneys for Plaintiff,
Office and P. O. Address,
32 Liberty Street,
New York 5, N. Y.

700 **Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

[Same Title.]

State of New York, }
County of New York, } ss.:

Benjamin Hinerfeld, being duly sworn, deposes and says:

701 1. He is the Special Deputy Superintendent of Banks in charge of the liquidation of the business and property in New York formerly of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, and is duly authorized to make this affidavit in support of the motion of the defendant, for an order dismissing the complaint pursuant to Rule 113 of the Rules of Civil Practice and in opposition to the motion of the plaintiff for summary judgment pursuant to the same rule. The statements made herein are based on facts ascertained by your deponent from the books, rec-
702 ords and documents of the New York Agency of The Yokohama Specie Bank, Ltd.

2. The Yokohama Specie Bank, Ltd., was and still is a banking corporation duly organized and incorporated under the Laws of the Empire of Japan, and it was, prior to December 8, 1941, duly licensed by the Superintendent of Banks to transact a limited banking business in the City of New York. Annexed hereto as "Exhibit A" is a typical license granted by the Superintendent of Banks to the Yokohama Specie Bank, Ltd., permitting it to maintain an Agency in the City of New York for the purposes therein specified.

Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 703

3. Upon information and belief the principal and head office of The Yokohama Specie Bank, Ltd., was and still is in the City of Yokohama in the Empire of Japan. The said The Yokohama Specie Bank, Ltd., also maintained numerous branches and agencies throughout the world, including the cities of Osaka, Nagoya and Tokyo in the Empire of Japan.

4. Until October 30, 1942, William R. White 704
was, and thereafter and until January 1, 1943, Jackson S. Hutto was, and thereafter Elliott V. Bell became and still is the duly appointed, qualified and acting Superintendent of Banks of the State of New York.

5. Pursuant to Section 5(b) of the Act of Congress of October 6, 1917 (40 Stat. 415), known as the "Trading With the Enemy Act", and Executive Order #8389, as amended by Executive Order #8785 issued by the President of the United States pursuant thereto, all the transactions therein specified were prohibited except as specifically 705
authorized and licensed by the Secretary of the Treasury. By Executive Order #8832, dated and approved by the President on July 26, 1941, the provisions of Executive Orders #8389 and #8785, as amended, were applied to the Empire of Japan.

6. On and after July 26, 1941, all the bank accounts maintained by the New York Agency of The Yokohama Specie Bank, Ltd., with its banks of deposit within the United States and its possession were blocked by the Executive Orders hereinabove referred to and, pursuant to the provisions of said orders, no payment out of, nor any charge

706 *Affidavit of Benjamin Hinerfeld in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

to said bank accounts could be made except as specifically authorized by the Secretary of the Treasury of the United States.

7. On and after July 26, 1941, all accounts maintained by foreign branches of The Yokohama Specie Bank, Ltd., with the New York Agency, were likewise blocked by said Executive Orders and, pursuant to the provisions of said Orders,
707 no entry in, or charge to said accounts could be made except as specifically authorized by the Secretary of the Treasury of the United States.

8. The New York Agency was forbidden by the Banking Law of the State of New York from taking deposits. Plaintiff was not a depositor of the Agency and maintained no account with it.

9. On December 8, 1941, and pursuant to the provisions of Section 606 of the Banking Law of this State, William R. White, as Superintendent, duly took possession of the business and property
708 in New York of The Yokohama Specie Bank, Ltd., including the New York Agency thereof, for the purpose of liquidating the same as provided in the Banking Law of this State.

10. Thereafter and on December 19, 1941, the Federal authorities granted to the Superintendent of Banks a limited license to effect payments for the purpose of office maintenance and other expenses incidental to the administration of the property of the New York Agencies of Japanese banks, including The Yokohama Specie Bank, Ltd., in anticipation of liquidation. Subsequently and on January 16, 1942, License NY-338836 SU

Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

709

was issued to the Superintendent by direction and on behalf of the Secretary of the Treasury by the Federal Reserve Bank in New York, a copy of which license is annexed to the moving papers. (See affidavit of William P. Leary, "Exhibit B".) By letter dated October 29, 1942, the Federal authorities revoked License XY-338836 SU insofar as it applied to The Yokohama Specie Bank, Ltd., New York Agency. A copy of said letter is annexed to the moving papers. (See affidavit of William P. Leary, "Exhibit A".)

710

11. On September 28, 1942, by Supervisory Order No. 27 issued under authority of the "Trading with the Enemy Act" and Executive Order No. 9095, as amended, issued pursuant thereto, the Alien Property Custodian undertook the supervision to the extent deemed necessary or advisable by him from time to time of the business and property of Yokohama Specie Bank, Ltd., in New York, without, however, vesting such business and property. A copy of such Supervisory Order is annexed to the moving papers. (See affidavit of William P. Leary, "Exhibit D".) Thereafter and on September 28, 1942, pursuant to the said Supervisory Order, the Custodian authorized the Superintendent to continue in possession of and liquidate the business and property in New York of The Yokohama Specie Bank, Ltd., and in the course thereof do such acts and perform such duties as may be required of or permitted to him by and in accordance with and subject to the provisions of the Banking Law of the State of New York. Said letter further provided that

711

712 the Superintendent shall, within a reasonable time prior to the acceptance of any claim or claims, deliver to the Custodian, or his duly authorized agent, a written notice of the proposed acceptance together with a statement setting forth the nature and the amount of the claim or claims intended to be accepted, and the names, addresses and, so far as known, the nationality of the holders or owners thereof, and the Custodian advised that upon re-
713 ceipt of such information, he would examine the same and take whatever action he may deem necessary or advisable. A copy of said letter is annexed hereto as "Exhibit B".

12. Thereafter and on the 15th day of February, 1943, the Alien Property Custodian by Vesting Order No. 915 vested in the interest of the United States of America the excess proceeds of the business and property in New York of The Yokohama Specie Bank, Ltd., remaining in the possession of the Superintendent of Banks after payment of the claims of creditors accepted or established in ac-
714 cordance with the Banking Law of the State of New York, arising out of transactions had by them with the New York Agency, or whose names appear as creditors on the books of said Agency, together with interest on such claims and the expenses of liquidation. A copy of said Vesting Order is annexed to the moving papers. (See affidavit of William P. Leary, "Exhibit E".)

13. On the 25th day of August, 1942, pursuant to the provisions of the Banking Law, the Superintendent of Banks duly gave notice to all creditors of The Yokohama Specie Bank, Ltd.,

Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 715

New York Agency, to present their claims to him, and make proper proof thereof on or before the 23rd day of November, 1942. On or about November 4, 1942, plaintiff filed a proof of claim, a copy of which is annexed hereto and marked "Exhibit C", which claim was thereafter duly rejected by the Superintendent of Banks and due notice of such rejection was given to the plaintiff on February 11, 1943.

716

14. Deponent has caused the books and records of The Yokohama Specie Bank, Ltd., New York Agency, to be examined, and that examination discloses that the name of the plaintiff does not appear on the books and records of the Agency at the present time, or at any time prior to December 8, 1941, or subsequent thereto, as a creditor, or as the owner of an account payable arising out of, or by reason of, or with respect to the matters set forth herein and in the complaint.

717

15. Pursuant to Section 622 of the Banking Law, the Superintendent duly prepared and filed in the office of the Clerk of the County of New York a list of claims duly presented in connection with the liquidation of the New York Agency of Yokohama Specie Bank. Such list also contained a statement of accounts payable as shown by the books and records of the Agency and as to which no claims had been presented. The name of plaintiff does not appear on such list as the owner or holder of any account payable arising out of, by reason of, or with respect to any of the matters set forth in the complaint. The name of plaintiff appears only as a claimant with respect to the matters set forth in the proof of claim hereto annexed.

718 *Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

16. The Superintendent of Banks has not as yet paid any dividend to the creditors of the New York Agency whose claims have been allowed or established in accordance with Section 606 (4) of the Banking Law. Whether such claims can be paid in full will depend upon the outcome of pending litigation in which claimants, including this plaintiff, seek to establish claims and accounts payable heretofore rejected by the Superintendent.

719 17. Annexed hereto is an affidavit of Frank Kearns who was employed by The Yokohama Specie Bank, Ltd., New York Agency, for approximately seventeen years prior to December 8, 1941, and who was retained thereafter by the Superintendent of Banks to assist in the liquidation of such Agency until February 28, 1943.

18. Your deponent has been advised by counsel and verily believes that by reason of the facts set forth in this affidavit, the annexed affidavit of Mr. Kearns, the exhibits annexed thereto and the ex-
720 hibits annexed to the moving papers, that there is no merit in the complaint, and that the application to dismiss the complaint should be granted.

BENJAMIN HINERFELD.

(Sworn to before Eugene J. Mulligan, March 19, 1946.)

Exhibit A, Annexed to Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

State of New York

Banking Department

Whereas, Yokohama Specie Bank, Limited, a banking corporation duly incorporated under the laws of the Empire of Japan, and having its principal office in the City of Yokohama, Japan, has made application to maintain an agency at No. 120 Broadway, in the Borough of Manhattan, City of New York, for the purpose of transacting the business of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable, or otherwise, or of making sterling or other loans, or any part of such business, and

Whereas, The said corporation has complied with the conditions imposed by the Banking Law and appears to be duly qualified to maintain such agency under the provisions thereof;

Now, therefore, I, William R. White, Superintendent of Banks of the State of New York, do hereby authorize and license the said corporation to transact for a period of three months from the date of November 15, 1941, at the above location, the business hereinbefore specified.

Witness, my hand and official seal of the Banking Department at the City of Albany, this fifteenth day of November in the Year of our Lord one thousand nine hundred and forty-one.

William R. White
Superintendent of Banks
By: Jackson S. Hutto
Deputy Superintendent of Banks

724

Exhibit B, Annexed to Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Office of
ALIEN PROPERTY CUSTODIAN
Washington

September 28, 1942.

725 Superintendent of Banks of
the State of New York
New York, New York

Re: Yokohama Specie Bank, Ltd.

Dear Sir:

Pursuant to Supervisory Order Number 27 issued by the undersigned under date of September 28, 1942, a copy of which is enclosed herewith, the undersigned has undertaken the supervision to the extent deemed necessary or advisable from time to time by the undersigned, of the
726 business enterprise and property referred to in such order, without, however, vesting such business enterprise or any of its capital stock or property or assets.

For the present, it is contemplated that you shall continue to retain possession of and liquidate such business enterprise, its property and assets, and in the course thereof you may do such acts and perform such duties as may be required of or permitted to you by and in accordance with and subject to the provisions of the Banking Law of the State of New York. You shall, however, within a reasonable time prior to

Exhibit B, Annexed to Affidavit of Benjamin Hinerfeld, in Support of Cross Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 727

the acceptance by you of any claim or claims, deliver to the undersigned or to his duly authorized agent, a written notice of the proposed acceptance together with a statement setting forth the nature and amount of the claim or claims intended to be accepted and the names, addresses and, so far as known, the nationalities of the holders or owners thereof. The undersigned will then examine the same and take whatever action he may 728
deem necessary or advisable. In connection therewith you are requested to accord to the undersigned or his duly authorized representative, access to and the right to inspect at any time your books and records dealing with the aforesaid company or its New York branch.

You are also requested to notify the undersigned when you have liquidated assets sufficient to produce funds necessary to pay, and there have been paid, all the accepted or established claims of creditors whose claims arose out of transactions had by them with the New York branch of 729
such business enterprise; or whose names appear as creditors on the books of such branch, together with interest thereon and the expenses of liquidation, so that the undersigned may take such action at that time with respect to the assets remaining in your hands as he may deem necessary in the interest of the United States.

The undersigned reserves such rights as he may have under the authority vested in him by law to vary from time to time the extent of the supervision of the aforesaid business enterprise and property or to terminate the same, provided that

730 *Exhibit B, Annexed to Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

the extent of such supervision will be changed or terminated only by means of written notification transmitted to you by the undersigned or his duly authorized agent.

Until receipt by you of such notice in writing you may proceed with the liquidation of the aforesaid company and its assets in the manner herein set forth.

731

Very truly yours,

LEO T. CROWLEY
Alien Property Custodian.

732

733

Exhibit C, Annexed to Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Proof of Claim.

Claim No. 958

734

In the Matter
of
The Liquidation of the Business and Property in New York of
The Yokohama Specie Bank, Ltd.

State of New York,
County of New York, } ss.:

George Roberts, being duly sworn deposes and says:

735

That he is a partner of Winthrop, Stimson, Putnam & Roberts, the legal representatives and attorneys for Banque Mellie Iran, a corporation of Iran whose principal place of business is Teheran, Iran.

That The Yokohama Specie Bank, Ltd., is justly and truly indebted to Banque Mellie Iran, c/o Winthrop, Stimson, Putnam & Roberts, 32 Liberty Street, New York City, in the sum of $112,461.27, said claim being based upon the following facts:

736 *Exhibit C, Annexed to Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

See Riler A annexed hereto and hereby made a part hereof.

	Amount
Evidence of the authority of deponent as legal representative of Banque Mellie Iran is annexed hereto as Riders B and C.	$112,461.27

737 That evidence of said claim is attached hereto and made a part hereof.

That the amount of said claim is now justly due and owing to the said claimant; that no part thereof has been paid or assigned; that claimant holds no security therefor; that there are no offsets or counterclaims thereto and that claimant is not indebted, directly or indirectly, to The Yokohama Specie Bank, Ltd., except as follows: Upon information and belief there are no exceptions. The source of deponent's information and the grounds of his belief are cable advices from Banque Mellie Iran in the files of its New York correspondent bank, the Irving Trust Company.

738 That claimant demand(s) priority of payment on the ground that said claim arises out of transactions had by claimant with the New York Agency of The Yokohama Specie Bank, Ltd.; and claimant's name appears as creditor on the books of said New York Agency.

That claimant is NOT a national of a BLOCKED COUNTRY within the meaning of Executive Order 8389 as amended and regulations and general rulings issued thereunder, and is not an agent of or acting for or on behalf of any such national.

Exhibit C, Annexed to Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 739

(If claimant is such a national, or is an agent of or acting for or on behalf of such a national, cross out the word "NOT" and give details below. See Instruction No. 8).

.....

.....

.....

BANQUE MELLIE IRAN 740

By GEORGE ROBERTS (signed)

Subscribed and Sworn to before me this 2nd day of November, 1942

MARY L. JAMES,
Notary Public.

RIDER A.

Upon information and belief, this claim represents payments on various dates shown below made by Irving Trust Company, of 1 Wall Street, New York, N. Y., as correspondent of Banque Mellie Iran, to the New York Agency of Yokohama Specie Bank, Ltd. The total of such payments was $113,461.27. These amounts were paid on instructions of Banque Mellie Iran to cover credits opened with Yokohama Specie Bank branches in Japan. Goods covered by said credits were to be shipped from Japan to Iran. The greater part of said credits of $113,461.27 were not utilized and repayment of said credits to Banque Mellie Iran was requested prior to December 2, 1941. 741

742 *Exhibit C, Annexed to Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

A list of the amounts of payments to Yokohama Specie Bank, New York branch, the dates paid, the credit numbers, and the amounts of the unutilized credit is as follows:

Credit #	Branch of Yokohama Specie Bank	Date Paid to Yokohama Specie Bank (NY)	Amount Paid to Yokohama Specie Bank (NY)	Unutilized Amount of Credit
12/5489	Nagoya	April 17, 1941	$ 95,135.57	$ 95,135.57
743 12/5489	Nagoya	June 26, 1941	858.65	858.65
12/5613	Osaka	Feb. 26, 1941	3,200.00	2,200.00
12/5614	Osaka	Feb. 26, 1941	1,100.00	1,100.00
12/5614	Osaka	May 29, 1941	200.00	200.00
12/5632	Osaka	March 4, 1941	1,450.00	1,450.00
12/5633	Osaka	March 4, 1941	255.97	255.97
13/7032	Tokyo	April 9, 1941	1,739.53	1,739.53
13/7157	Tokyo	June 2, 1941	1,252.50	1,252.50
13/7158	Tokyo	June 2, 1941	607.50	607.50
13/7211	Tokyo	July 2, 1941	501.55	501.55
13/7225	Tokyo	July 11, 1941	500.00	500.00
13/7234	Tokyo	July 22, 1941	4,760.00	4,760.00
744 13/7136	Tokyo	May 21, 1941	1,900.00	1,900.00
			$113,461.27	$112,461.27

The Yokohama Specie Bank, Ltd., New York agency, confirms that it was advised by its various offices to refund all of said unutilized credits listed above except No. 12/5633 for $255.97 and No. 13/7032 for $1,739.53, in a letter from it to the Irving Trust Company, dated December 2, 1941, which reads as follows:

(Letter of December 2, 1941 is same as Estrin Exhibit B., printed, *supra*, pp. 36.)

Exhibit C. Annexed to Affidavit of Benjamin Hinerfeld, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

745

Application was duly made by the Irving Trust Company as correspondent of Banque Mellie Iran to the Foreign Property Control Division of the Federal Reserve Bank of New York on November 27, 1941, for a Treasury Department license to authorize such refunds. This application was amended on December 1, 1941 to cover an item of $1,900. Following advice from the Federal Reserve Bank of New York on December 15, 1941, 746
that the original application had been mislaid, a copy of said application was filed on December 16, 1941 and a new complete application was filed on December 18, 1941. No action was taken by the Treasury Department due to the institution of the Liquidation proceedings of the New York Agency of the Yokohama Specie Bank, Ltd.

The sources of deponent's information and the grounds of his belief are correspondence in the files of Irving Trust Company between it and the New York Branch of Yokohama Specie Bank, Ltd., cables from Banque Mellie Iran and conferences 747
with officers and employees of Irving Trust Company who handled the transactions in question.

(Riders B and C annexed to the Proof of Claim are respectively affidavit of Joseph W. Rowe, a vice president of Irving Trust Company sworn to November 2, 1942, and letter from L. I. Estrin, a vice president of Irving Trust Company, dated February 19, 1942 to Winthrop, Stimson, Putnam & Roberts, Esqs. confirming that Banque Mellie, Iran authorized the latter attorneys to present its claim against the New York Agency of Yokohama Specie Bank, Ltd.)

748 **Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

[Same Title.]

State of New York,
County of New York, } ss.:

Frank Kearns, being duly sworn, deposes and says:

749 I was employed by the New York Agency of the Yokohama Specie Bank, Limited, for seventeen years prior to and until its closing on December 8, 1941 in various departments, and was thereafter retained by the Superintendent of Banks in the liquidation of the Agency until February 28, 1943. I am fully acquainted with the matters set forth in the moving affidavits and exhibits insofar as they pertain to the New York Agency and I personally handled a number of the items mentioned therein.

I have read the pleadings and motion papers and 750 have examined the exhibits annexed thereto and submit this affidavit, at the request of the Superintendent of Banks, in support of the defendants' application to dismiss the complaint and also in opposition to plaintiff's motion for summary judgment.

The Yokohama Specie Bank, Limited, was a corporation organized under the laws of Japan and had its principal office in Yokohama. In addition, throughout the world, it had a number of branches and agencies, and was licensed by the Superintendent of Banks to maintain an Agency

Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 751

in New York for the purpose of doing a limited banking business.

Upon the books and records of the New York Agency, each of the other offices of the Yokohama Specie Bank was considered a separate entity similar to a correspondent bank. Separate and distinct accounts were maintained by the New York Agency for each of these other offices.

Two separate and distinct series of transactions are involved in this action. The first series of 752 transactions refers to telegraphic remittances which the New York Agency forwarded to various Japanese branches of the bank at the request of the Irving Trust Company. The second series relates to subsequent authorizations received by the New York Agency from such branches to make specified payments on their behalf to the Irving Trust Company for the account of the plaintiff. Each of these series of transactions will be discussed separately.

I. 753

The first series involves telegraphic remittances by the New York Agency during the period from February 26, 1941 through July 22, 1941 to branches of Yokohama Specie Bank, at Osaka, Tokyo and Nagoya, at the request of the Irving Trust Company. Each of these telegraphic remittances followed the same pattern and procedure and was accomplished in the following manner.

The first step was the delivery, usually by messenger, to the New York Agency of an "advice" from the Irving Trust Company (Plaintiff's Ex. (Estrin) A-1—A-12). The "advice" notified the

754 *Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

New York Agency that Irving Trust Company had credited the account of the New York Agency with a certain sum in dollars as of the date of the "advice" or the following day and directed the New York Agency to remit such amount by cable to a specified Japanese branch of the bank and to notify such branch that the money was for the account of a designated letter or letters of credit. The "advice" further indicated that it was given at the
755 direction of the plaintiff.

Upon receipt of this "advice", I would prepare a "transfer voucher" (Plaintiff's Ex (Holzka) A-1) (an interoffice memorandum for the bookkeeping department) indicating that the dollar account of the particular branch with the New York Agency upon a ledger known as "Interoffice A/C Their A/C" (Holzka Ex. A-4) was to be credited with the amount of the remittance and a corresponding balancing debit was to be made to the cash account of the Irving Trust Company (Holzka Ex. A-3). Upon approval of such voucher
756 by the Japanese representative of the Agency (evidenced by his "chop" or Japanese signature stamped thereon), a cable would be sent and the original "advice" would be stamped with the date of payment and transmission. On the same day the entries specified in the transfer voucher would be made by the bookkeeping department.

At or about the same time, I would make entries of the transaction upon a book kept by me in my department known as a "Register of T.T. Receivable", the "T.T." being an abbreviation for "telegraphic transfer". This register is a memorandum record in chronological and numerical order of all

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executed telegraphic transfers. It is not in any sense a book of account reflecting assets or liabilities. It does not contain a list or schedule of any creditors of the bank. No entries therein are made by the bookkeeping department. The register was never balanced against any other book or record of the Agency and simply for statistical purposes of the Agency totals would be taken at times.

When making entries in the register, I would insert underneath the column "Date", the date 758
received; under the column "No.", the number assigned by me to the telegraphic transfer; under the column "Applicant", the name of the applicant when supplied; under the column "Payer", the name of the party making the payment or credit to the New York Agency; under the column "Face Amount", the sum in dollars of the telegraphic transfer; under the column "Date of Payment", the date when the cable was sent; and under the column "Remarks", whatever explanation of the transaction I thought necessary. With respect to the "advices" received from the Irving Trust 759
Company, there usually appeared in my writing, the following: "no c. adv. rec. we c. 2/26", which is an abbreviation of "no cable advice received—we cabled 2/26" (Holzka Ex. M). This explanation means that the Agency received no prior instructions from its foreign branch to accept the sum in question from Irving Trust Company for the account of such foreign branch; and that a cable had been sent to the foreign branch on the date specified in compliance with the "advice".

The entries regarding this telegraphic transfer would then be finished and the transaction termin-

760 *Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

ated insofar as the New York Agency was concerned, except for payment of the cable charges for which a bill was sent to the Irving Trust Company. When payment of the cable charges was received, I would stamp a copy of the cable with the date of such receipt. (Holzka Ex. B-2). The "c.c." appearing upon the cable over the payment stamp, is in my writing and means "cable charges". All of the memoranda, vouchers and papers would
761 then be filed away in a closed file.

As there had been no prior request by the foreign branch to the New York Agency that it accept the remittance from Irving Trust Company, I would include in the cable to the foreign branch the phrase, "wire if objectionable". The reason therefore, is that in banking practice, no cable transfer is complete until the credit, tendered by the remitting bank (here the New York Agency), is expressly or impliedly accepted by the remittee bank (here the foreign branch). If, as was sometimes the case, the transaction was initiated by the
762 foreign branch through instructions to the New York Agency to accept payment from a local bank for credit to the account of the foreign branch, then no further acceptance of the credit from the foreign branch would be necessary, since its instruction to the New York Agency implied that the foreign branch was willing to accept the credit to its account made by the New York Agency. An example of this type of transaction is annexed hereto (Supt. Ex. A). Where, however, as in the instant cases, the foreign branch had not advised the New York Agency of the proposed payment by Irving Trust Company, it was necessary to obtain

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confirmation that the foreign branch would accept the credit. Hence, the request by the New York Agency in its cable to the foreign branch "wire if objectionable". No objections to any of the cables were received but on the contrary each of the credits were accepted by the foreign branches, and thus the several cable transfers were completed and the transactions consummated.

The use of the expression "T.T. Bought" in the cable to the branch was for the purpose of ad- 764
vising the branch of the bookkeeping entries made by the Agency to effectuate the transaction. By means of this notation, the Agency advised the foreign branch of its receipt of dollars and the credit of the same to the account of the foreign branch in the same manner as if the foreign branch had directly purchased dollar exchange and had caused the same to be delivered to the Agency for credit to its account.

I have been shown copies of various cables pass-
ing between the plaintiff and the branches of the Yokohama Specie Bank abroad (Exhibits an- 765
nexed to affidavit of Mohammad Hossein Sadri), as well as cables passing between the plaintiff and the Irving Trust Company in New York, photostatic copies of which are annexed hereto (Supt. Exs. B-1 to B-11. Matters in script and rubber stamp legends are not part of the original cables but were placed thereon by employees of Irving Trust Company after receipt).

In each case it appears that prior to the receipt of the "advice" by the New York Agency, the plaintiff, by direct cable communication with a foreign branch of the Yokohama Specie Bank, established an irrevocable letter of credit in favor

766 *Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

of a named beneficiary whom the foreign branch was to notify "without confirmation", that is without the foreign branch itself becoming obligated to the beneficiary under the letter of credit. It further appears that under the terms of the letters of credit so established, plaintiff was obligated to "cover" by telegraphic remittance through the Irving Trust Company of New York, i.e. plaintiff was obligated to remit funds to the
767 foreign branch to enable the latter to perform the obligations of the plaintiff to the beneficiaries under the letters of credit. Presumably, pursuant to the terms of the letters of credit, plaintiff sent cables to the Irving Trust Company instructing it to make the remittances in question to the several foreign branches of Yokohama Specie Bank (Supt. Ex. B-1—B-11 *supra*). A typical cable directed to the Irving Trust Company is as follows (Supt. Ex. B-1):

> "Please remit telegraphically to Yokohama Specie Bank, Ltd. Osaka, $3200.00, $1100.00,
768 $650.00, account credit 12/5613, 12/5614, 12/5615, respectively."

The Irving Trust Company apparently stamped each of these cables when received with the descriptive phrase "payments and transfers". Under the instructions received from plaintiff (except as to the item in the third cause of action), the Irving Trust Company was free, according to established banking practice, to make the telegraphic remittances to Osaka and the other foreign branches in any manner it saw fit. The Irving Trust Company chose to make such remit-

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tances through the New York Agency by delivery of the "advices" hereinabove referred to.

At no time was there any agreement or understanding expressed or implied by the New York Agency that in the event the remittances were not used abroad, the New York Agency would refund the amount thereof or any unused portion.

The New York Agency would not normally have knowledge of the terms or conditions of the letters of credit. The New York Agency was not a 770
party to the letters of credit here involved and its information with respect thereto was in the first instance derived solely from the "advices" received by it from Irving Trust Company. The inclusion of the letter of credit numbers in its cables to the foreign branches of the bank was made at the request of the Irving Trust Company to enable the foreign branch to identify the credits covered by the respective telegraphic transfers.

In each of the transactions referred to in the complaint, the New York Agency was acting as an agent and not as a principal. It was simply a 771
conduit for the transmission of funds and had completely executed all instructions prior to July 25, 1941. At the completion of these transactions, there was no book or record of the New York Agency which contained any entry indicating that the agency was in any way obligated to the plaintiff or to any one acting on its behalf as a result of the "advice".

Throughout the moving affidavit, there appears various intimations and allegations that the payments to the New York Agency were for the purpose of opening certain credits. That is not cor-

rect as the credits had been previously opened by the plaintiff directly with the branches of the Yokohama Specie Bank, Limited, abroad.

In the moving affidavit of Holzka (pg. 4) there appears the statement that the books of the Agency show that none of the funds paid by the Irving Trust Company to the New York Agency were "in fact transferred to any of the offices of The Yokohama Specie Bank, Limited, in
773 Japan * * * ". No request was made by the Irving Trust Company that the New York Agency transfer any specie abroad. Under well established banking practice, the transfer of funds under telegraphic transfer is accomplished by cable advice in the manner performed by the New York Agency. Both Irving Trust Company and plaintiff are fully familiar with and recognize this practice (Mohammed Ex. A-4, B-4 etc.). In this connection, annexed hereto (Supt. Ex. C) are a letter from Irving Trust Company dated September 10, 1942 inquiring as to a telegraphic transfer which was
774 accomplished in the same manner as those set forth in the complaint and reply thereto dated September 15, 1942.

II.

The second series of transactions relate to the authorizations received from the foreign branches to the New York Agency to pay specified sums to the Irving Trust Company acting for the plaintiff.

Pursuant to the Trading with the Enemy Act (Executive Order 8389, as Amended), Japanese funds and assets in this country were frozen on

Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 775

July 26, 1941 and the Yokohama Specie Bank, Limited, New York Agency, was at all times on and after that date restrained from performing any of the prohibited acts mentioned in the Act and Amendments thereto unless authorized by general or special license.

From July 26, 1941 until the suspension of the New York Agency on December 8, 1941, a National bank examiner and his assistants and agents were in daily attendance at the New 776
York Agency and supervised all of its transactions. No payment or transaction was permitted unless authorized by the National bank examiner or his assistants and a license either general or special procured authorizing the transaction.

During the period from September 9, 1941 until December 2, 1941, the New York Agency received cable authorizations from its branches to pay to the Irving Trust Company for the account of the plaintiff as follows:

From Osaka	$ 2,200.00	(L/C 12/5613)
	1,100.00	(L/C 12/5613)
	1,450.00	(L/C 12/5632)
	200.00	(L/C 12/5614)
From Tokyo	$ 4,760.00	(L/C 13/7234)
	500.00	(L/C 13/7225)
	501.55	(L/C 13/7211)
	1,739.53	(L/C 13/7032)
	1,900.00	(L/C 13/7136)
	1,252.50	(L/C 13/7157)
	607.50	(L/C 13/7158)
From Nagoya	$95,135.57	(L/C 12/5489)
	858.65	(L/C 12/5489)

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No authorizations were received from Osaka to pay $3,701.00 (L/C 12/5515) or the sum of $255.97 (L/C 12/5633).

The several cable authorizations vary in form but not in substance. Thus, plaintiff's Exhibit N-6 authorizes the Agency to "advise and pay" (A/P Irving Trust Company • • • as repayment fund of their (specifying letters of credit and amounts) • • •.) Plaintiff's Exhibit N-4, on the other hand,
779 authorizes the Agency to "cancel your previous entry and pay", the Banque Mellie Iran deposit of $95,944.22 against their credit #12/5489. Again plaintiff's exhibit N-2 states, "cancel your T. T. R. and refund $1450.00 to Irving less our charges $8.45". Although the forms of the several cables differ in language, their substance was the same. The respective foreign branches were merely authorizing the Agency to pay dollars to Irving Trust Company for the account of plaintiff and were instructing the Agency as to the bookkeeping entries which it could make to carry out the pay-
780 ment. Each of the cables was forwarded in compliance with a request sent by plaintiff direct to the respective foreign branches asking for refund of the unused portions of the credits which had theretofore been established as hereinabove outlined. According to established banking practice, under these instructions the foreign branches could have complied with the requests of plaintiff by making the remittances through any bank they chose. They elected to do so through the New York Agency. Before any of the cables could be executed by the Agency licenses had to be obtained. At any time prior to payment, the respective for-

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eign branches could have cancelled their instructions. In the event of the receipt of any such notice of cancellation, the Agency would have refused to make the payment.

In all instances, the funds had been transmitted to Japan and an attempt was being made to retransfer the funds to this country. Before the transfer could be effected, the New York Agency had to obtain licenses to carry out the transactions by accepting the credits tendered by the foreign 782
branch and making the entries necessary to effectuate the same, that is, by debiting the accounts of the foreign branches on the books of the Agency and by crediting cash and paying the same out to the beneficiary, in this case, the Irving Trust Company. Until such licenses were obtained the Agency would not and could not accept the credits tendered by the foreign branches, or otherwise comply with the authorizations to make payments.

Accordingly, upon receipt of the several cables from Osaka, the New York Agency made applications to the Federal Reserve Bank for licenses 783
permitting it to debit the accounts of the Osaka branch and make the following payments totalling $4950.00:—

$2200.00 (Application #760)
1100.00 (Application #760)
1450.00 (Application #484)
200.00 (Application #760)

Application #760 was denied October 30, 1941 by the Federal Reserve Bank, while Application #484 was denied on October 1, 1941.

784 *Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

The New York Agency also made application for similar licenses regarding the following authorizations received from Tokyo:

$1900.00 (Application #659)
1252.50 (Application #861)
607.50 (Application #861)

Application #659 was denied on October 14, 1941, while Application #861 was denied November 1,
785 1941. A copy of license Application #861 and of the denial thereof by the Treasury Department is annexed hereto as Supt. Ex. D. All of the other applications and denials are similar in form.

Irving Trust Company was advised of all of the denials by the Treasury Department (Estrin Ex. B). See also letter from Irving Trust Company dated December 1, 1941 and copy of letter to Irving Trust Company dated November 3, 1941 annexed hereto as Supt's. Ex. E and F, respectively.

Under date of December 6, 1941, the New York Agency prepared Application #1184 in connection
786 with the payment of $1739.53 authorized by Tokyo but this application was not filed. Appearing on the rear of that application is a memorandum of disapproval by the National bank examiner (Supt's. Ex. G annexed hereto). Irving Trust Company also submitted an application #9300 to the Federal Reserve Bank under date of December 18, 1941 and by letter of January 21, 1942, the Federal Reserve Bank advised that no action was being taken. A copy of such application and letter are annexed hereto as Supt's. Ex. H.

Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 787

In accordance with instructions of the Japanese Agent of the New York Agency, if an application for license was denied, I would notify the branch office of the denial and in such a case no payment would be made by the New York Agency even if a license were subsequently obtained, unless the authorization to make the payment were again confirmed and directed by the originating branch.

Prior to the freeze on July 26, 1941, the following practice was followed by the New York Agency 788
upon receipt of cable authorization to pay from one of its branches. Until payment, no entry would be made or credit given upon any book or record. If, prior thereto, the remitting branch revoked or cancelled its instructions, no payment would be made or credit given in any event. The instructions in all cases were revocable until payment was made and the transaction consummated. If no revocation was received, a transfer voucher would be prepared and if approved by the Japanese Agent at the Agency, the dollar account of the branch (Interoffice A/C Their A/C) would be 789
debited and the corresponding cash account credited. Normally, a check would be simultaneously drawn to the order of the beneficiary and delivered to the latter in accordance with the instruction. In the case of Irving Trust Company, since the Agency maintained an account with it, no check was drawn, but instead an advice of credit to its account was usually delivered to it by messenger as illustrated by Supt.'s Ex. I annexed hereto.

After the freeze, a license had to be obtained before the appropriate entries or payment could

790 *Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

be made. Such license was permissive and did not require or direct the agency to make payment. At times, even if a license were procured, the National bank examiner disapproved the transaction and payment was not made. After the freeze, the cables authorizing payment were simply held in abeyance in an open file until appropriate licenses and authorizations were obtained.

At no time after the freeze, was any entry made
791 or credit given upon any book or record of the New York Agency indicating execution or performance of any of the cable authorization herein involved. At no time, since the original cable transfers to the various foreign branches was any of the entries reflecting such transfers reversed, cancelled or placed in suspense. At no time after the freeze was there any appropriation of funds of the New York Agency or any earmarking or segregating of any of its assets for payment of the sums referred to in the cable authorizations.

The dollar account of the Osaka branch with
792 the New York office (Interoffice A/C Their A/C) was continuously overdrawn from the period February 25, 1941 until the suspension of the bank at which time it was overdrawn to the extent of $8,504,272.30. The dollar account of the Nagoya branch of the New York Agency was also overdrawn continuously for the period from February 25, 1941 until the suspension of the bank with the exception of one day, July 1, 1941 when there was a credit balance of $15,020.71. On all other days, the balances were overdrawn and at the time of suspension the account showed a debit balance of

Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

793

the sum of $293,574.76. Annexed hereto as Supt.'s Ex. J and K, respectively, are photostatic copies of pages of the ledger (Interoffice A/C Their A/C) pertaining to the dollar account of the Osaka office and the Nagoya office for the period after the cable authorizations were received until the last entry was made on December 5th and 3rd, respectively. Thereafter and until the suspension on December 8, 1941, minor adjustments produced the debit balances above given. The symbol "Dr." under the 794
column "Dr. or Cr." indicates a debit balance.

At no time after the freeze did the plaintiff or Irving Trust Company appear as a creditor with respect to any of the items in suit upon any book of the New York Agency.

Annexed hereto as Superintendent's Exhibit L is a copy of letter from Irving Trust Company, dated December 18, 1941 and reply thereto dated January 8, 1942.

Annexed hereto as Superintendent's Exhibit M is a copy of letter from Yokohama Specie Bank, Ltd., at Osaka to the plaintiff herein which was 795
obtained from the attorney for the plaintiff.

FRANK KEARNS.

(Sworn to before Eugene J. Mulligan, March 19, 1946).

796 **Exhibits A-1, A-2, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

Exhibit A-1.

Cable sent by Yokohama Specie Bank, Nagoya, on January 7, 1941 received by Yokohama Specie Bank, New York, January 7, 1941.

Receive from Irving Trust Co., New York, as
797 our T.T. bought, the sum of $12,000. under credit No. 12/5489 issued by Banque Mellie Iran, Teheran.

[Stamp "Paid January 7, 1941
The Yokohama Specie Bank, Limited."]

Exhibit A-2.

Copy of letter dated January 7, 1941 from Yokohama Specie Bank, Ltd., New York Agency
798 **to Irving Trust Company, 1 Wall Street, New York City, Attention Mr. I. Nelson, Foreign Tellers.**

We confirm our telephone conversation of this morning, at which time we informed you that we had received the following cable instructions from our Nagoya office today.

"Receive from Irving Trust Company the sum of $12,000.00 under credit No. 12/5489 issued by Banque Mellie Iran, Teheran."

May we expect payment from you today of this amount?

Exhibits B-1, B-2, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 799

Exhibit B-1.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Please Remit Telegraphically to Yokohama Specie Bank, Ltd. Osaka, $3200, $1100, $650. Account Credit 12/5613, 12/5614, 12/5615 Respectively. 800

(Sent February 25, 1941,
Received Februafy 26, 1941)

Exhibit B-2.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York. 801

Remit telegraphically $4165., $255.97 and $1450. Yokohama Specie Bank, Ltd. Osaka, Account Credits 12/5624, 12/5633, 12/5632, respectively.

(Sent March 2, 1941, Received March 4, 1941)

802 **Exhibits B-3, B-4, B-5, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

Exhibit B-3.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Please remit telegraphically Yokohama Specie
803 Bank, Ltd. Tokio $1739.53 account credit 13/7032.

(Sent April 8, 1941, Received April 9, 1941)

Exhibit B-4.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Please remit telegraphically to * * * Yokohama Specie Bank, Ltd. Nagoya $95,135.57 account credit 12/5489.

804

(Sent April 16, 1941, Received April 17, 1941)

Exhibit B-5.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Remit telegraphically Yokohama Specie Bank, Ltd. Tokyo $1900 account credit 13/7136.

(Sent May 20, 1941, Received May 21, 1941)

Exhibits B-6, B-7, B-8, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 805

Exhibit B-6.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Remit telegraphically $200 Yokohama Specie Bank, Ltd. Osaka account credit 12/5614.

(Sent May 27, 1941, Received May 29, 1941) 806

Exhibit B-7.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Remit telegraphically Yokohama Specie Bank, Tokyo $1252.50 and $607.50 account credits 13/7157 and 13/7158 respectively.

(Sent May 29, 1941, Received May 31, 1941) 807

Exhibit B-8.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Please remit telegraphically to Yokohama Specie Bank Ltd., Nagoya $858.65 account credit 12/5489.

(Sent June 25, 1941; Received June 26, 1941)

808 **Exhibits B-9, B-10, B-11, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

Exhibit B-9.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Please remit telegraphically to Yokohama
809 Specie Bank Tokyo $501.55 account credit 13/7211.

(Sent June 30, 1941, Received July 2, 1941)

Exhibit B-10.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Please remit telegraphically to Yokohama Specie Bank, Ltd., Tokio $500. Account credit
810 13/7225.

(Sent July 10, 1941, Received July 11, 1941)

Exhibit B-11.

Cable from Banque Mellie Iran at Teheran to Irving Trust Company at New York.

Remit telegraphically to Yokohama Specie Bank, Tokyo, $4760 account credit 13/7234.

(Sent July 21, 1941, Received July 22, 1941)

Exhibit C-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 811

IRVING TRUST COMPANY
One Wall Street
New York
Foreign Division

September 10, 1942.

Mr. Charles Murray, In Charge Yokohama
Specie Bank Ltd., in Liquidation 812
526 Broadway
New York, New York

Dear Sir:

On January 2, 1941 we paid the Yokohama Specie Bank Ltd., New York $10,694.00 with instructions for them to cable this amount of their Osaka Branch, under credit 12/5504. Also, on January 23, 1941 we paid to them $7,694.00 to be cabled to their Osaka Branch, under credit 12/5541.

We now have a letter from our correspondent, 813
the Banque Mellie Iran, Teheran, informing us that the amounts utilized against these credits were $10,688.00 and $7,688.00 respectively.

Will you please examine your records and inform us whether the Yokohama Specie Bank in Osaka has ever requested their New York office to refund to us the balance of $12.00.

Your cooperation will be appreciated.

Yours very truly,

IRVING TRUST COMPANY
By G. W. Burns

814 **Exhibit C-2, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

YOKOHAMA SPECIE BANK LTD.

September 15, 1942

Irving Trust Company
1 Wall Street
815 New York City

Foreign Division

Gentlemen:

Replying to your letter of September 10th, the records of the New York Agency of the Yokohama Specie Bank, Ltd., do not indicate any request by their Osaka branch to refund to you any amount in connection with cable transfers made under your instructions on January 2 and January 23, 1941.

816 Yours very truly,

C. R. MURRAY
Special Deputy Superintendent

CRM/EN

Exhibit D-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 817

Application for a License to engage in a Foreign Exchange Transaction, Transfer of Credit, Payment, Export or Withdrawal from the United States, or the Earmarking, of Gold or Silver Coin or Bullion or Currency, or the Transfer, Withdrawal or Exportation of, or Dealing in, Evidences of Indebtedness or Evidences of Ownership of Property.* 818

(To be executed and filed in triplicate with the Federal Reserve Bank for the district or with the Governor or High Commissioner of the territory or possession of the United States in which the applicant resides or has his principal place of business or principal office or agency. If the applicant has no legal residence or principal place of business or principal office or agency in a Federal Reserve district or such territory or possession the application should be filed with the Federal Reserve Bank of New York or the Federal Reserve Bank of San Francisco.) 819

To the Secretary of the Treasury
Washington, D. C.

Sir:

I.

In accordance with Executive Order No. 8389 of April 10, 1940, as amended, regulating transac-

*All definitions appearing in Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder shall apply to the terms employed herein.

820 *Exhibit D-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

tions in foreign exchange, etc., and the Regulations and Rulings issued thereunder, the undersigned hereby applies for a license to execute the transaction described below:

A. (1) The name of the applicant is The Yokohama Specie Bank, Ltd.;

(2) Applicant resides at or, in the case of a
821 corporation, partnership, association or other organization, has its principal place of business at: 120 Broadway, New York, New York, U. S. A.;

(3) Applicant is and has been a citizen of Incorporated under the laws of the Empire of Japan, since 1880: Head Office Yokohama, Japan;

(4) The nationality** of the applicant is Japanese.

822 (5) Since 1880 the applicant has been engaged in the business of Foreign Banking as an Agency of a Foreign Bank.

B. The applicant desires a license in order to: (State in detail the nature, purpose and amount of the transaction, and the name, address, nationality** and extent of in-

** In the case of a corporation, partnership, or association, give country in which organized and indicate the approximate percentages of stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of such organization owned or controlled, directly or indirectly, by a blocked country or one or more nationals thereof.

Exhibit D-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

823

terest of every party, including the applicant, involved or interested in the transaction.)

Pay to Irving Trust Company, New York the sum of $1860.00 for account of Banque Mellie Iran, Teheran, Iran, as repayment funds of their L/C 13/7157—$1,252.50 and L/C 13/7158—$607.50, as per wire instructions dated and received by us on Oct. 26th, '41 from our Tokyo Office. In making this payment we wish to issue our check to the order of Irving Trust Company drawn against our blocked account with them and debit the account of our Tokio Office.

824

The Yokohama Specie Bank, Limited

Nationality—Japanese.

II.

825

C. The applicant represents and warrants that no party other than those mentioned in item B above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein. If there are any exceptions, note them below.

D. The applicant represents and warrants that all the facts herein stated are correct and true and that he does not have knowledge of any material facts in connection with such application which are not fully and accurately set

826 *Exhibit D-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

forth herein. (Attach hereto schedules of any additional material information.)

E. The applicant represents and warrants that he has complied, and agrees that he will comply, in all respects, with Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder, and with any and all licenses issued to the ap-
827 plicant pursuant thereto, and that, with respect to the transaction here involved, no other application of the undersigned for a license has been filed or is pending, except as follows:

THE YOKOHAMA SPECIE BANK, Limited

By S. ARAKI,
p.p. Agent

(Verified on October 27, 1941).

828 [Stamp "Inspected by me and facts set forth herein believed to be correct, (*signed*) N. A. Ulery, National Bank Examiner, dated October 29, 1941".]

829

Exhibit D-2, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

FEDERAL RESERVE BANK OF NEW YORK

November 1, 1941

The Yokohama Specie Bank, Limited
120 Broadway
New York, N. Y.

830

Dear Sir:

You are hereby advised that your application Serial No. 861, made pursuant to Executive Order No. 8389, as amended, is denied in accordance with instructions of the Treasury Department.

Very truly yours,

per pro F. FAIBEY,
Foreign Property
Control Department

831

832 **Exhibit E, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

IRVING TRUST COMPANY
One Wall Street
New York

Foreign Division

December 1, 1941

833 Yokohama Specie Bank Ltd.
Equitable Building
New York, New York

Gentlemen:

We refer to your letter of November 3, informing us that you had received instructions from your Tokio Office to pay us $1,900., representing refund of a letter of Credit No. 13/7136, and $1,860.00 representing refund of $1,252.50 under letter of Credit No. 13/7157, and $607.50 under letter of Credit No. 13/7158. You informed us that
834 your applications to make the payments were denied.

We also wish to refer to the following payments made to you by order of Banque Mellie Iran, Teheran:

Dates Paid	Amount	Credit Number
April 9, 1941	$1,739.53	13/7032
July 2, 1941	501.55	13/7211
July 11, 1941	500.00	13/7225
July 22, 1941	4,760.00	13/7234

Exhibit E, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Since we understand from Banque Mellie Iran, that these payments are unutilized we have been requested to obtain a refund. We have filed an application with the Treasury Department for the necessary license permitting you to make these payments and those mentioned in your letter of November 3. However, we shall appreciate it if in the meantime you cable your Tokio Office for authority to pay these amounts if and when a license is granted, and bill us for your cable charges.

We understand you have already received cable instructions to refund to us the following amounts:

Amount	Your Office	L/C Number
$95,994.22	Nagoya	5489
2,200.00	Osaka	5613
1,300.00	Osaka	5614

An application for a license permitting you to make these payments also has been made and on receipt of a reply we shall inform you.

Will your please let us hear from you as soon as you hear from your Tokio Branch.

Yours very truly,

IRVING TRUST COMPANY

By G. A. Borge

838

Exhibit F, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Nov. 3rd, 1941.

Irving Trust Company
1 Wall Street
New York City,
New York.

839

Gentlemen:

On Oct. 6th, '41, we received wire instructions from our Tokio Office to pay you the sum of $1,900.00 for A/C Banque Mellie Iran, Teheran, as repayment funds of their L/C 13/7136. On the same day we duly applied (our Application No. 659) to the Treasury Department for a License permitting us to execute this payment. We have now received a reply from The Federal Reserve Bank of New York stating that our application No. 659 has been denied in accordance with instructions of the Treasury Department.

840

On Oct. 27th, '41, we received wire instructions from our Tokio Office to pay you the sum of $1,860.00 for A/C Banque Mellie Iran, Teheran, as repayment fund of their L/C 13/7157 $1,252.50-L/C 13/7158 $607.50. On the same day we duly applied (Our Application No. 861) to the Treasury Department for a License permitting us to execute this payment. However, up until this date we have not received a reply from The Federal Reserve Bank of New York regarding the fate of our application. Immediately upon hearing

Exhibit F, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

841

from them in this connection, we shall communicate with you.

Trusting the above meets with your requirements, we remain

Yours very truly,

THE YOKOHAMA SPECIE BANK, Limited

842

p.p. Agent

843

844

Exhibit G, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Re: Application No. 1184. The Yokohama Specie Bank Ltd. New York.

1. Refer to applications Nos. 484(NY252507); 659(NY268747); 760(NY275728) and 861(NY-286193), like transaction and the same payee all of which have been *denied.*

845

2. This is an application to refund to the Bank of Mellie, Iran, Teheran, Iran, funds which on the date of the "Order" were in Tokio.

3. This is not a liability of this (New York) branch as of July 25, 1941, or since. The Irving Trust Company apparently has *no* monetary interest, and it appears that there is *no* reason whatever that would justify a license.

December 6, 1941

846

Att: Mr. Athern.

A. A. Ulery
National Bank Examiner.

Exhibit H-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 847

Application for a License to engage in a Foreign Exchange Transaction, Transfer of Credit, Payment, Export or Withdrawal from the United States, or the Earmarking, of Gold or Silver Coin or Bullion or Currency, or the Transfer, Withdrawal or Exportation of, or Dealing in, Evidences of Indebtedness or Evidences of Ownership of Property.*

848

(To be executed and filed in triplicate with the Federal Reserve Bank for the district or with the Governor or High Commissioner of the territory or possession of the United States in which the applicant resides or has his principal place of business or principal office or agency. If the applicant has no legal residence or principal place of business or principal office or agency in a Federal Reserve district or such territory or possession the application should be filed with the Federal Reserve Bank of New York or the Federal Reserve Bank of San Francisco.)

849

Dec 18, 1941

To the Secretary of the Treasury
Washington, D. C.

I.

Sir:

In accordance with Executive Order No. 8389 of April 10, 1940, as amended, regulating transac-

* All definitions appearing in Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder shall apply to the terms employed herein.

850 *Exhibit H-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

tions in foreign exchange, etc., and the Regulations and Rulings issued thereunder, the undersigned hereby applies for a license to execute the transaction described below:

A. (1) The name of the applicant is Irving Trust Company;

(2) Applicant resides at or, in the case of a
851 corporation, partnership, association or other organization, has its principal place of business at: One Wall Street, New York, New York, United States;

(3) Applicant is and has been a citizen of ..... since .....;

(4) The nationality** of the applicant is United States;

(5) Since April 19, 1871 the applicant has been
852 engaged in the business of banking.

B. The applicant desires a license in order to:
(State in detail the nature, purpose and amount of the transaction, and the name, address, nationality** and extent of in-

** In the case of a corporation, partnership, or association, give country in which organized and indicate the approximate percentages of stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of such organization owned or controlled, directly or indirectly, by a blocked country or one or more nationals thereof.

Exhibit H-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

853

terest of every party, including the applicant, involved or interested in the transaction.)

Permit payment to us by Yokohama Specie Bank, Ltd., New York Agency, of a sum in the aggregate of $112,461.27 to be credited to the account on our books in the name of Banque Mellie Iran.

854

On the various dates shown on the attached schedule, we debited the account of Banque Mellie Iran, Teheran, and paid to Yokohama Specie Bank Ltd., New York Agency, for account of one of their branches in Japan, a total of $113,461.27. These amounts were paid on instructions of Banque Mellie Iran in cover of credits opened with Yokohama Specie Bank branches in Japan. We believe that the goods covered by the credits were for shipment from Japan to Iran.

From recent exchanges of cablegrams with Teheran we learn that due to present conditions the greater part of these credits have not been utilized and, as a result, the funds should revert to Banque Mellie Iran, Teheran.

855

We understand from Yokohama Specie Bank Ltd., New York Agency, that they have received, or expect to receive in the next few days, instructions from their branches to make these refunds to us.

The account of Banque Mellie Iran is not subject to Executive Order 8389, as amended.

Yokohama Specie Bank Ltd.
Japanese National

Applicant's No. 9300

856 *Exhibit H-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

Credit #	Branch of Yokohama Specie Bank	Date Paid to Yokohama Specie Bank (N. Y.)	Amount Paid to Yokohama Specie Bank (N. Y.)	Unutilized Amount of Credit
12/5489	Nagoya	April 17, 1941	$95,135.57	$95,135.57
12/5489	Nagoya	June 26, 1941	858.65	858.65
5613	Osaka	Feb. 26, 1941	3,200.00	2,200.00
5614	Osaka	Feb. 26, 1941	1,100.00	1,100.00
5614	Osaka	May 29, 1940	200.00	200.00
857 5632	Osaka	March 4, 1941	1,450.00	1,450.00
5633	Osaka	March 4, 1941	255.97	255.97
13/7032	Tokyo	April 9, 1941	1,739.53	1,739.53
7157	Tokyo	June 2, 1941	1,252.50	1,252.50
7158	Tokyo	June 2, 1941	607.50	607.50
7211	Tokyo	July 2, 1941	501.55	501.55
7225	Tokyo	July 11, 1941	500.00	500.00
7234	Tokyo	July 22, 1941	4,760.00	4,760.00
13/7136	Tokyo	May 21, 1941	1,900.00	1,900.00

858

859

Exhibit H-2, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

FEDERAL RESERVE BANK
OF NEW YORK

Fiscal Agent of the United States

January 21st, 1942

860

Irving Trust Company
1 Wall Street
New York, New York

Gentlemen:

With reference to your application #9300 dated December 18, 1941, for a license covering the transaction therein referred to, we have been advised by the Treasury Department that no action is being taken.

The liquidation of the Yokohama Specie Bank, Ltd. is under the supervision of the Superintendent of Banks. 861

Very truly yours,

per pro C. M. CULLENNDEAN
Foreign Property
Control Department

862

Exhibit I, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

February 6, 1941

Irving Trust Company
One Wall Street
New York, New York

863 Re: Your advice of credit of January 3, 1941 $3,701.00 for a/c of our Osaka Office Re: credit 12/5515 Banque Mellie Iran, Tehcran

Gentlemen:

Our Osaka Office has notified us by cable that the beneficiary of the amount at caption has refused to accept it for the reason of a disagreement between the buyer and seller on a contract.

We hereby authorize you to debit our account with you for $3,701.00 as a reimbursement for the account of the original depositor.

864

Yours very truly,

THE YOKOHAMA SPECIE BANK, LIMITED

p. p. Agent

MEL

865

Exhibits J and K, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Exhibit J.

Exhibit J annexed to the affidavit of Frank Kearns sworn to March 19, 1946 consists of four ledger sheets of the account of the Osaka office of Yokohama Specie Bank, Ltd. maintained on the books of the New York Agency of Yokohama Specie Bank, Ltd. in the ledger entitled "Inter- 866
Office Account Their Account". These ledger sheets cover the period from August 12, 1941 to December 5, 1941 (the last entry) and indicate an overdraft by the Osaka office of a sum in excess of $5,000,000. during the entire period specified.

Exhibit K.

Exhibit K annexed to the affidavit of Frank Kearns, sworn to March 19, 1946 consists of four 867
ledger sheets of the account of the Nagoya office of Yokohama Specie Bank, Ltd. maintained on the books of the New York Agency of Yokohama Specie Bank, Ltd. in the ledger entitled "Inter-Office Account Their Account". These ledger sheets cover a period from July 12, 1941 to December 3, 1941 (the last entry) and indicate an overdraft of a sum in excess of $260,000. during the entire period specified.

868 **Exhibit L-1, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

IRVING TRUST COMPANY
One Wall Street
New York

Foreign Division

December 18, 1941

State of New York
869 Banking Department
New York, N. Y.

Gentlemen:

Enclosed is a statement of the account of the Yokohama Specie Bank, New York Agency, showing a credit balance of $984,954.63 at the close of business on December 8, 1941.

According to our records they were not liable to us in any manner and we were not holding any securities in safekeeping for their account at the close of business on that date.

870 For your information, we have filed an application with the Federal Reserve Bank to permit payment to us by the Yokohama Specie Bank of $112,461.25 for the credit of Banque Mellie Iran, Teheran. This amount was paid to the Yokohama Specie Bank in cover of Letters of Credit opened direct by Banque Mellie Iran. The refund represents unused balance of these credits.

Yours very truly,

H. MILLER LAWDER
Assistant Secretary

871

Exhibit L-2, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

January 8, 1942

Irving Trust Company
Foreign Division
One Wall Street
New York City

872

Gentlemen:

Receipt is acknowledged of your letter of December 18th, enclosing statement of account of the Yokohama Specie Bank, Ltd., New York Agency.

In your letter you have referred to an application which has been filed with the Federal Reserve Bank to permit payment to you of $112,461.25, as per letter of December 2, 1941.

As you know, the Superintendent of Banks took possession of the business and property in New York of the Yokohama Specie Bank, Ltd., pursuant to Section 606 of the Banking Law, on December 8, 1941, and, of course, all instructions given by the Agency prior to that date are cancelled.

873

Yours very truly,

C. R. MURRAY
Special Deputy Superintendent

874 **Exhibit M, Annexed to Affidavit of Frank Kearns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

THE YOKOHAMA SPECIE BANK LIMITED

Osaka, October 21st, 1941

The Manager,
Banque Mellie Iran,
Teheran.

875 Dear Sirs:

Re: Your Credit No. 12/5632 for $1,450.00 by order of Messrs. Davoud Yoodefian.

With reference to our letter of the 9th ultimo regarding the above-mentioned credit, we have to inform you with much regret that we have just received a cable from our New York Office, reading as follows:—

"Yours September 9th license denied Banque Mellie."

876

Such being the case, there remains no option for us but to await developments of the international situations retaining your fund in our hand.

We nevertheless shall thank you to receive any instruction which you may deem necessary.

Yours faithfully,

for THE YOKOHAMA SPECIE BANK LTD.

877

Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

[Same Title.]

State of New York, }
County of New York, } ss.:

Henry L. Bayles, being duly sworn, deposes and says that he is an attorney and counsellor-at law, associated with Edward Feldman, attorney 878
for the defendants herein, and submits this affidavit in connection with the motion and cross-motion for summary judgment herein.

This motion was argued on Monday, March 25, 1946 and in accordance with the suggestion of the Court, your deponent has since been permitted by plaintiff's attorney to examine various cables and correspondence passing between plaintiff and Irving Trust Company, and between plaintiff and the Nagoya, Osaka and Tokio branches of the Yokohama Specie Bank, and plaintiff's attorney has furnished your deponent with 879
copies or permitted photostats to be made of the cables and letters listed in the following schedule, all of which are annexed hereto and marked with the exhibit numbers indicated therein:

880 *Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

From	To	Date Sent	Date Received If Indicated	Exhibit No.
Plaintiff	I. T. Co.*	11/ 2/41	11/ 3/41	A
I. T. Co.	Plaintiff	11/ 3/41		B
Plaintiff	I. T. Co.	11/ 8/41	11/10/41	C
Plaintiff	I. T. Co.	11/20/41	11/21/41	D
I. T. Co.	Plaintiff	11/21/41		E
Plaintiff	I. T. Co.	11/26/41	11/27/41	F
Plaintiff	I. T. Co.	12/ 7/41	12/ 8/41	G
881 I. T. Co.	Plaintiff	12/ 8/41		H
Plaintiff	I. T. Co.	1/ 4/42	1/ 6/42	I
I. T. Co.	Plaintiff	1/ 9/42		J
Plaintiff	I. T. Co.	1/22/42	1/23/42	K
Plaintiff	I. T. Co.	3/17/41	3/18/42	L

In addition to the foregoing, it should be noted that none of the communications between plaintiff and Irving Trust Company or between plaintiff and the several branches of the Yokohama Specie Bank, and submitted on these motions by either plaintiff or defendant, was in the file of the New
882 York Agency of the Yokohama Specie Bank at the time it was taken over by the Superintendent, except as specifically otherwise noted in the affidavits or in the communications themselves, and to the extent that they have been annexed to affidavits submitted by the defendants, such communications were obtained from either Irving Trust Company of New York or the attorneys for the plaintiff subsequent to the commencement of this litigation.

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*Irving Trust Company of New York.

Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 883

With reference to Credit No. 12/5489 there is annexed hereto copy of a cable (supplied by the attorneys for plaintiff) from Irving Trust Company to plaintiff dated January 7, 1941, and photostats of the following from the files of the New York Agency, to wit:

Cable from Nagoya to the New York Agency, dated January 31, 1941;

Credit Advice from Irving Trust Company to the New York Agency of the same date; and 884

Letter from the New York Agency to the Irving Trust Company of the same date.

These papers, which are annexed hereto as "Exhibits M, N, O and P," respectively, are incorporated in this affidavit to complete the papers relating to this credit, submitted in the preceding affidavits of the parties thereto.

Annexed hereto as "Exhibit Q," is a copy of defendant's demand for a Bill of Particulars 885 dated January 13, 1944, and the Bill of Particulars furnished by plaintiff dated March 2, 1944.

Also annexed hereto is an affidavit of George W. Burns, an employee of Irving Trust Company of New York, sworn to April 1, 1946.

Deponent has procured from the Alien Property Custodian a photostatic copy of a "Notice of Claim Arising as a Result of Vesting Order" filed on Form APC-1 with the Alien Property Custodian by Winthrop, Stimson, Putnam &

886 *Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

Roberts, Esqs., acting as attorney-in-fact for plaintiff. This notice of claim, which is dated and sworn to on February 5, 1944, is for the sum of $116,162.27, and is based on the unutilized credits involved in the present action. In the notice of claim it is stated that the "claim is filed with the Office of the Alien Property Custodian without prejudice to the right of Banque Mellie Iran to prosecute its rights against the Superintendent
887 of Banks of the State of New York which are the subject of the aforementioned pending action."

HENRY L. BAYLES.

Sworn to before John D. Dever April 10, 1946.)

Exhibit A, Annexed to Affidavit of Henry
888 **L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

(Cable sent by Banque Mellie Iran, Teheran, to Irving Trust Company, New York, on November 2, 1941, received November 3, 1941)

Please cable if you have received any amount from Yokohama Specie Bank Tokyo Nagoya or Osaka for our account re our documentary credit.

889

Exhibits B and C, Annexed to Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Exhibit B.

(Cable sent by Irving Trust Company, New York to Banque Mellie Iran, Teheran, on November 3, 1941)

Your 11/2 Yokohama Specie Bank, N. Y. received Tokyo instructions Refund $1900 L/C 13/7136 $1252.50 L/C 13/7157 $607.50 L/C 13/7158 Federal authorities denied license $1900. Others still pending. 890

Exhibit C.

(Cable sent by Banque Mellie Iran, Teheran, to Irving Trust Company, New York, on November 8, 1941, received November 10, 1941)

Yours 3rd remittances Yokohama Specie Bank Ltd. concern amounts transferred by you previously per our instructions to Yokohama Specie Bank Ltd., Tokyo Nagoya and Osaka bearing credit number as cover our documentary credits opened with them few of which owing to present circumstances unutilized stop Hence request you take necessary steps with USA competent authorities that said amounts or similar funds which will be retransferred from Japan to be refunded to our account with you under telegraphic advice stop Thanking your assistance stop Cable result. 891

892

Exhibits D and E, Annexed to Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Exhibit D.

(Cable sent by Banque Mellie Iran, Teheran, to Irving Trust Company, New York, on November 20, 1941 received November 21, 1941)

Anxiously awaiting reply ours 8th re remit-
893 tances Yokohama Specie Bank, Ltd.

Exhibit E.

(Cable sent by Irving Trust Company, New York to Banque Mellie Iran, Teheran, on November 21, 1941)

Yours November 8th for license purpose advise dates you authorized payments Yokohama Specie
894 Bank New York also numbers letters of credit unutilized and full particulars underlying transactions. Shall do all possible obtain licenses.

895

Exhibit F, Annexed to Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Exhibit F.

(Cable sent by Banque Mellie Iran, Teheran to Irving Trust Co., New York, on November 26, 1941 received November 27, 1941)

Yours 21st we quote first numbers credit second same branch *Shokin third dates cable authorized payment fourth unutilized amounts fifth name goods respectively as follows 896

12/5489 Nagaya 16/4/41 for $95,135.57 and 25/6/41 for $858.65 $95,994.22 artificial cement stop
5515 Osaka 1/1/41 for $3,701 hosiery year stop
5613 Osaka 25/2 $2,200 rubber footwear
5614 Osaka 25/2 for $1,100 and 27/5 for $200 $1,300 rubber sheet
5632 Osaka 2/3 $1,450 rubber boots
5633 Osaka 2/3 $255.97 preservations
13/7032 Tokyo 8/4 $1,739.53 rubber boots 897
7157 Tokyo 29/5 $1,252.50 footbal blister
7158 Tokyo 29/5 $607.50 footwear
7211 Tokyo 30/6 $501.55 rubber sheet
7225 Tokyo 10/7 $500 woolen yarns
7234 Tokyo 21/7 $4,760 woolen yarn

*("Shokin" is the cable address of Yokohama Specie Bank Ltd.)

898

Exhibits G, H and I, Annexed to Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Exhibit G.

(Cable sent by Banque Mellie Iran, Teheran, to Irving Trust Company, New York, on December 7, 1941 received December 8, 1941)

Ours 26th ultimo re remittances Shokin please
899 cable what steps taken stop

We quote particulars another credit as follows 13/7136 Tokyo 20th May $1900 rubber boots

(Shokin is cable address in various cities for Yokohama Specie Bank Ltd)

Exhibit H.

(Cable sent by Irving Trust Company, New York, to Banque Mellie Iran, Teheran, on December 8, 1941)

900

Refer yours Dec. 7th applied for license 11/29 still pending.

Exhibit I.

(Cable sent by Banque Mellie Iran, Teheran, to Irving Trust Company, New York, on January 4, 1942 received January 6, 1942)

Yours 8th ultimo re remittances Yokohama Specie Bank please telegraph result

901

Exhibits J and K, Annexed to Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Exhibit J.

(Cable sent by Irving Trust Company, New York, to Banque Mellie Iran, Teheran on January 9, 1942)

Yours 4 license pending doing utmost obtain
902 treasury dept. action stop feel intervention Iran
Legation Washington may be helpful if you in-
struct shall give legation all particulars

Exhibit K.

(Cable sent by Banque Mellie Iran, Teheran to Irving Trust Company, New York, on January 22, 1942, received January 23, 1942)

903

Yours 9th re remittances Yokohama Specie Bank ministry foreign affairs have telegraphically instructed Iranian Legation Washington on 18th to refer to you and do the needful with your cooperation stop we expect your utmost assistance

904

Exhibits L and M, Annexed to Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Exhibit L.

(Cable sent by Banque Mellie Iran, Teheran, to Irving Trust Company, New York, on March 17, 1941 received March 18, 1941)

Yours 6th ult. credit 12/5515 understand agree-
905 ment made remit $3,701 to Yokohama Specie Bank Ltd Osaka

Exhibit M.

(Cable sent by Irving Trust Company, New York, to Banque Mellie Iran, Teheran, on January 7, 1941)

906 Debited your account with dollars 12000 paid Yokohama Specie Bank Nagoya Japan credit No. 12/5489.

Exhibits N and O, Annexed to Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 907

Exhibit N.

(Cable received by Yokohama Specie Bank, Ltd., New York, from Yokohama Specie Bank, Ltd., Nagoya on January 31, 1941)

Receive from Irving Tr. Co. N. Y. as our TT bought & wire $24,000, under credit #12/5489 issued by Banque Mellie Iran, Teheran 908

[Stamp "Paid January 31, 1941 Yokohama Specie Bank Ltd."]

Exhibit O.

Irving Trust Company
One Wall Street
New York

Jan. 31, 1941 909

ADVICE
FOR

YOKOHAMA SPECIE BANK, LTD.
120 BROADWAY
NEW YORK, N. Y.

WE CREDIT YOUR ACCOUNT VALUE TODAY, $24,000.00

ACCOUNT OF YOUR NAGOYA OFFICE
REIMBURSEMENT UNDER CREDIT NO 12/5489

BY ORDER OF BANQUE MELLIE IRAN
CHIEF OFFICE
TEHERAN, IRAN

DEPOSITED
BY

INSTRUCTIONS DATED JAN. 31 NY
IRVING TRUST COMPANY
BY G. W. BURNS

[Stamp "Paid January 31, 1941 Yokohama Specie Bank Ltd."]

910

Exhibits P and Q, Annexed to Affidavit of Henry L. Bayles, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

Exhibit P.

(Letter from Yokohama Specie Bank Ltd., New York, to Irving Trust Company, 1 Wall Street, New York, N. Y. dated January 31, 1941)

911 We confirm our telephone conversation of this morning at which time we informed you that we had received the following cable from our Nagoya Office today:

"Received from Irving Trust Co. N. Y. as our T.T. bought & wire $24,000.—under credit #12/5489 issued by Banque Mellie Iran Teheran."

May we expect payment from you of this amount?

912

Exhibit Q.

(Consists of Superintendent's Demand for Bill of Particulars and plaintiff's Bill of Particulars printed at pp. 225, 229 of the Record.)

913

Affidavit of George W. Burns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

GEORGE W. BURNS, being duly sworn, deposes and says: That I am employed by the Irving Trust Company in its Collection Department which includes the "Payments and Transfers Unit" and have been employed by the Irving Trust Company 914
for forty-one years.

I am familiar in general with the procedure of the Irving Trust Company regarding cable and telegraphic remittances, as well as with the particular transactions between the Irving Trust Company and the New York Agency of the Yokohama Specie Bank, Ltd., which are set forth in the affidavits filed in connection with the applications for summary judgment now pending in the Supreme Court, New York County, in the action entitled "Banque Mellie Iran, Plaintiff, against Yokohama Specie Bank, Ltd., et al., Defendants". 915

I have examined Exhibit G-1 annexed to the affidavit of Mohammad Hossein Sadri, sworn to June 2, 1945. Under that exhibit, it appears that Banque Mellie Iran opened an irrevocable credit #13/7136 with the Tokyo office of the Yokohama Specie Bank, in the sum of $1900.00; and the credit, among other things, provided that the Banque Mellie Iran would cover by telegraphic remittance through the Irving Trust Company. The Irving Trust Company was not a party to that letter of credit and normally would not have knowledge of any of its terms or conditions. The first knowl-

916 *Affidavit of George W. Burns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

edge that the Irving Trust Company received of this transaction was a cable from Banque Mellie Iran, received on May 21, 1941, a photostatic copy of which is annexed to the affidavit of Frank Kearns sworn to March 19, 1946, as Exhibit B-5. That cable would be referred to the "Payments & Transfer Unit" of the Irving Trust Company. Under the instructions in that cable to "remit telegraphically" to Yokohama Specie Bank,
917 Tokyo, the Irving Trust Company was free to complete the telegraphic remittance through any bank or medium it saw fit. It chose to do so through the New York Agency of the Yokohama Specie Bank, Ltd. Upon receipt of the cable, the Irving Trust Company would prepare a form of "advice", a photostatic copy of which is annexed as Exhibit A-6 to the affidavit of L. I. Estrin of the Irving Trust Company sworn to January 18, 1946. This "advice" would be one of four manifold copies which are annexed hereto as Exhibits A, B, C, and D. The date of the cable from Banque
918 Mellie Iran would be indicated under "Instructions Dated". On the date of the "advice", the original (Exhibit A) would be sent to the New York Agency, usually by messenger and we would assume that the credit was acceptable to it and that it would comply with our directions to make a cable transfer of credit to the designated Japanese Branch of Yokohama Specie Bank, Ltd., unless we heard from it immediately to the contrary. On the same date, a manifold copy (Exhibit B) would be sent by mail to Banque Mellie Iran. Another manifold copy (Exhibit C) would go to the bookkeeping department of the Irving Trust Company and a credit would be made to the account

Affidavit of George W. Burns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

919

of the New York Agency, of the Yokohama Specie Bank maintained with the Irving Trust Company. Exhibit D would likewise go to the bookkeeping department for the entry of the corresponding debit to the account of Banque Mellie Iran. The "advice" which was forwarded by the Irving Trust Company to the New York Agency of the Yokohama Specie Bank was in compliance with the instructions received by the Irving Trust Company to "remit telegraphically" to Yokohama 920
Specie Bank, Tokyo and was a request by the Irving Trust Company to the New York Agency that it make the cable transfer of credit or "telegraphic remittance" to its Tokyo office under a designated credit number.

When these entries were made and the advice given, insofar as the Irving Trust Company were concerned, it would be a completed transaction and there would be no entry upon any of its books or records indicating that Irving Trust Company was under any obligation to anyone as a result of this transfer of credit.

921

I have been shown a photostatic copy of the cable sent by the New York Agency to the Tokyo office which is annexed as Exhibit E-2 to the affidavit of Walter J. Holzka sworn to January 17, 1946. This cable is similar in substance although not the same in form, with the type of cable which the Irving Trust Company would send to complete a requested cable transfer of credit or cable remittance.

In the event that the Irving Trust Company had been requested by a depositor to make a similar cable remittance to one of its foreign correspondents, the Irving Trust Company would send a

922 *Affidavit of George W. Burns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

cable to its foreign correspondent advising it that it had received a certain sum of money from its depositor and that it was crediting the account of the correspondent with that sum of money on that date under a specified credit number. The Irving Trust Company would assume that this cable transfer of credit was acceptable to its foreign correspondent and the transfer completed, unless the foreign correspondent cabled back promptly to
923 the contrary.

In the event that several months after the original remittance the Irving Trust Company received cable instructions from its foreign correspondent to make a refund to its original depositor, the Irving Trust Company would notify its customer and if acceptable, the account of the customer would be credited and the account of the foreign correspondent debited as of that date.

During the period of the "Japanese freeze" on and after July 26, 1941, the Irving Trust Company received cable authorizations from foreign
924 correspondents to make various payments and refunds. In the event that a license was necessary, application would be made for payment and everything held in abeyance until the license was secured. If a license were refused, the information would be passed along to the remitting bank and the matter held in abeyance pending further instructions from it. No entries would be made upon any book or record of the Irving Trust Company during the freeze while the matter was held in abeyance.

GEORGE W. BURNS.

(Sworn to before Adam D. Keppler April 1, 1946.)

Exhibits A and B, Annexed to Affidavit of George W. Burns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 925

Exhibit A.

IRVING TRUST COMPANY
New York

Advice for
YOKOHAMA SPECIE BANK, LTD.
New York, N. Y. Date May 21, 1941

We Credit Your Account, Value 5/22, $1,900.00

Account of Your Tokyo Office for Account Credit 13/7136 926
Advise Beneficiary by Cable

By Order of
Deposited by Banque Mellie Iran
Chief Office
Teheran, Iran

Instructions Dated May 20
IRVING TRUST COMPANY
By G. W. BURNS

Exhibit B.

IRVING TRUST COMPANY
New York 927

We Have Transferred
to the Credit of
YOKOHAMA SPECIE BANK, LTD.
New York, N. Y. Date May 21, 1941

And Debited Your Account Value 5/22 $1,900.00

Account of Your Tokyo Office for Account Credit 13/7136
Advise Beneficiary by Cable

By Order of
Advice for Banque Mellie Iran
Chief Office
Teheran, Iran

Instructions Dated May 20
IRVING TRUST COMPANY
By G. W. BURNS

928 **Exhibits C and D, Annexed to Affidavit of George W. Burns, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.**

Exhibit C.

IRVING TRUST COMPANY
New York

Credit
YOKOHAMA SPECIE BANK, LTD.
New York, N. Y.

Date May 21, 1941
Value 5/22 $1,900.00

Account of Your Tokyo Office for Account Credit 13/7136
929 Advise Beneficiary by Cable

By Order of
Deposited by Banque Mellie Iran
Chief Office
Teheran, Iran

Instructions Dated May 20
Coll. Department
Department Initial
Authorized Initial
G. W. BURNS

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930 **Exhibit D.**

IRVING TRUST COMPANY
New York

Transfer to
Yokohama Specie Bank, Ltd.
New York, N. Y.

Date May 21, 1941
Value 5/22 $1,900.00

Account of Your Tokyo Office for Account Credit 13-7136
Advise Beneficiary by Cable
By Order of
DEBIT Banque Mellie Iran
Chief Office
Teheran, Iran

Instructions Dated May 20
Coll. Department
Department Initial
Authorized Initial
G. W. BURNS

931

Affidavit of Frank N. Powelson, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

FRANK N. POWELSON, being duly sworn, deposes and says:

That he is a Second Vice-President of The Chase National Bank of the City of New York, 932
Foreign Department, (hereinafter referred to as Chase National) and has been associated with the said bank for many years.

Your deponent is familiar with the practice which Chase National follows in connection with cable transfers to its branches abroad and other institutions and also the procedure it follows in connection with authorizations received by Chase National from its foreign branches and other institutions to make payment for their accounts. The procedure and practice followed by Chase National is, I believe, in accordance with the general practice followed by banks in the City of 933
New York.

Your deponent has been requested by the Superintendent of Banks to set forth this general practice in the following hypothetical case:

A bank, which we shall call X Bank in France, opens by cable a letter of credit with The Chase Bank in Shanghai (hereafter referred to as Chase, Shanghai). In this cable, X Bank advises Chase, Shanghai, of all of the terms of the letter of credit, including the letter of credit number assigned to it and that X Bank will cover by telegraphic remittance through Y Bank in New York

934 *Affidavit of Frank N. Powelson, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

(correspondent of X Bank). On the same day X Bank cables Y Bank to remit telegraphically to Chase, Shanghai, the sum of $1,000 under letter of credit number 13-4369, for example. Upon receipt of this cable Y Bank in New York could make telegraphic remittance to Chase, Shanghai, through any means it saw fit. Y Bank maintains a deposit account with Chase National and Y Bank adopts the following procedure for effecting
935 the telegraphic transfer. Y Bank debits X's account with it and instructs Chase National to charge its account in the amount of $1,000 and to cable a like amount to Chase, Shanghai, for the account of credit 13-4369 and indicating that this was done at the request of X Bank. Chase National would then cable Chase, Shanghai and supply Chase, Shanghai with the information which was given to it by Y Bank, i.e., the amount of the transfer, letter of credit number, etc. Upon sending this cable, Chase National would credit the account of Chase, Shanghai with the amount.
936 The transaction of the cable transfer would then be completed, executed and closed insofar as Chase National was concerned. In such a case, Chase National would not be considered as opening the credit in Shanghai as the letter of credit had already been opened by X Bank directly with Chase, Shanghai. Chase National would simply be considered a remitter of a cable transfer and not a party to the letter of credit. Chase National would not have any knowledge of the terms of the letter of credit and there would be no implication that Chase National agreed to refund the $1,000 to Y Bank in the event that the credit

Affidavit of Frank N. Powelson, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 937

abroad was not used by the beneficiary of the letter of credit.

Let us assume further that several months later the beneficiary in Shanghai under the letter of credit does not use it and that it has expired. X Bank cables to Chase, Shanghai, to remit telegraphically to Y Bank in New York any sums which have not been used under the letter of credit. Upon receipt of such instructions, Chase, Shanghai, could remit telegraphically by any 938
means to Y Bank in New York. It would probably do so, however, by cabling authorization to Chase National to pay to Y Bank. The receipt of such authorization would not place Chase National under any obligation to Y Bank prior to payment and until such payment was made, no entry would be made upon its books. If countermanding instructions were received by Chase National from Chase, Shanghai, prior to payment by Chase National to Y Bank, Chase National would recognize such annulment of Chase, Shanghai's instructions and cancel the payment-order. When 939
payment was actually made by Chase National, it would debit the account of Chase, Shanghai for the amount of the payment and this second and independent transaction would then be completed and terminated.

FRANK N. POWELSON (Sgd.)

(Sworn to before Thomas J. Luckett April 9, 1946.)

940

Affidavit of John Frank Wood, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

[Same Title.]

State of New York,
County of New York, } ss.:

John Frank Wood, being duly sworn, deposes and says that he is a Deputy Superintendent of
941 Banks and Counsel for the Banking Department of the State New York.

Annexed hereto is a copy of Chapter 65 of the Laws of 1946, approved by the Governor of the State of New York on February 28, 1946. This legislation was sponsored by the Banking Department, and was first introduced in the Senate (Senate Introductory 428, Print 429) and in the Assembly (Assembly Introductory 460, Print 461) on January 21, 1946. The measure was in due course referred to the Committee on Banks in each house of the Legislature.

942 At or shortly after the time of the introduction of the bill, and before said bill was reported out of the Committee on Banks in either house of the Legislature, deponent delivered copies of the supporting memorandum, prepared by the Banking Department under his supervision, a copy of which memorandum is annexed, to the following:

(a) Fifteen copies thereof to the office of the Chairman of the Assembly Committee on Banks for the use of the members of that committee.

Affidavit of John Frank Wood, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion. 943

(b) Fourteen copies thereof to the office of the Chairman of the Senate Committee on Banks for the use of the members of that committee, and one copy thereof to Senator Pliny W. Williamson, a member and former Chairman of the Senate Committee on Banks.

(c) One copy thereof to the Majority Leader of the Senate;

One copy thereof to the Minority Leader 944
of the Senate;

One copy thereof to the Majority Leader of the Assembly; and

One copy thereof to the office of the Minority Leader of the Assembly.

After the bill had been printed, at least one additional copy of such memorandum was delivered or mailed to the office of each of the above mentioned leaders.

Prior to the approval of the bill by the Governor, 945
at least three copies of the aforesaid memorandum were delivered or mailed to the office of the Counsel for the Governor.

JOHN FRANK WOOD.

(Sworn to before John D. Dever, April 10, 1946.)

(Copy of Chapter 65 of the Laws of the State of New York for the year 1946 annexed.)

946

Memorandum, Annexed to Affidavit of John Frank Wood, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

NEW YORK STATE BANKING DEPARTMENT.

MEMORANDUM

Senate Int. 428 Print 429

Assembly Int. 460 Print 461

947 AN ACT to amend the banking law, in relation to the vesting of title to, the prosecution of actions arising out of, and claims against, the business and property in this state of foreign banking corporations in involuntary liquidation.

This bill relates to problems arising in connection with the liquidation of the business and property of foreign banking corporations which have been taken over by the Superintendent.

Under the present law, the Superintendent is required to deal with assets of institutions being
948 liquidated by him in the names of the respective institutions. While this procedure creates no difficulties in the case of domestic institutions, it results in technical problems in the liquidation of foreign owned assets. In such cases, the Superintendent does not take possession of the foreign corporation, but merely of its business and property in this state. Since he is not in possession of the foreign corporation itself, the Superintendent should not be required to act in its name. If he does not act in the name of the foreign corporation, there is no legal entity in whose name he may act. If he acts in the name of the foreign corporation,

he may be confronted with the disabilities imposed on foreign corporations by the laws of the state (see *Yokohama Specie Bank* v. *National City Bank* (1944), 183 M. 610, revg. 182 M. 369), and in the case of enemy corporations, by federal law. To correct these matters, the bill provides that title to all assets of foreign corporations taken over by the Superintendent shall vest by operation of law in the Superintendent, who may deal with respect 950 to such assets and may sue or be sued in his own name as Superintendent. The amendment is modelled in part after Section 514 of the Insurance Law.

Under the present law, preference in the distribution of the assets in this state of foreign banking corporations is granted to persons whose claims arise out of transactions with the New York agency, or whose names appear as creditors on the books of such agency. The granting of a preference to the latter class is unnecessary since book creditors are ordinarily persons whose claims 951 arise out of transactions with the New York agency and are, therefore, embraced in the first class. Conceivably, a book creditor may not have had a transaction with the New York agency. Such a situation would be most unusual and it would seem to the Banking Department that if it did arise, the creditor should not be preferred. Accordingly, the amendment would limit the preference granted by the act to persons whose claims arise out of transactions with the New York agency and, at the same time, it would provide a definition of the kind of transaction which would

952 ***Memorandum, Annexed to Affidavit of John Frank Wood, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.***

entitle a creditor to participate. The bill provides that the transaction must be such that if the agency were a separate and independent legal entity, an enforceable legal obligation would have been created against it. This, we believe, is the present law (*Singer* v. *Yokohama Specie Bank Ltd.* (1944), 293 N. Y. 542), and the amendment is intended to eliminate any doubt on the subject.

953 The final section of the bill indicates the manner in which it applies to pending liquidations but makes it clear that the new provisions are not to apply retroactively so as to affect substantive rights already accrued or to render invalid actions heretofore taken in the liquidation of the business and property in this state of foreign banking corporations.

January 9, 1946

954

955

Affidavit of Charles H. Schoch, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

[Same Title.]

State of New York,
County of New York, } ss.:

Charles H. Schoch, being duly sworn, deposes and says that he is a Deputy Superintendent of Banks of the State of New York, and is in charge 956
of the supervision of commercial banks, trust companies, private banks and bankers, industrial banks, foreign agencies, safe deposit companies and certain investment companies.

For purposes of supervision, the Banking Department has always treated the New York Agency of a foreign banking corporation as an entity separate and apart from the parent corporation or any of its other branches, offices or agencies. Separate books and supporting records are required to be maintained reflecting assets in the possession or under the control of the New York 957
Agency and all liabilities of the Agency. Regular periodic examinations of the business and affairs of the New York Agency are conducted by examiners of the Department. Such examinations are for the purpose of determining the assets of the Agency, and its liabilities as reflected by the books and supporting records of the Agency.

In addition to the periodic examination, the Banking Department in accordance with Section 204 of the Banking Law requires each Agency in this State to prepare and submit weekly a report showing the assets in its possession or under its

958 *Affidavit of Charles H. Schoch, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.*

control, and the liabilities as reflected by its books and supporting records. No such weekly reports are required of domestic banks or trust companies or other banking organizations which have capital and surplus as required by the Banking Law.

One of the essential purposes of the periodic examination of the Agencies and of the weekly reports above referred to is to protect the creditors of the Agency and to assure the state that the
959 assets here are adequate to pay such creditors. If it appears from any of such examination or reports that the assets in the possession of or under the control of the New York Agency are insufficient to pay the creditors of the Agency, immediate request is made to the Agency for correction of the condition.

A report of the assets and liabilities of the foreign banking corporation as a whole is regularly received by the Banking Department once in each year upon the issuance of a license or renewal license, in accordance with the provisions of Sec-
960 tion 201 of the Banking Law.

CHARLES H. SCHOCH.

(Sworn to before John D. Dever, April 10, 1946.)

961

Affidavit of Edward Feldman, in Support of Cross-Motion of Defendant Superintendent of Banks and in Opposition to Plaintiff's Motion.

[Same Title.]

State of New York,
County of New York, } ss.:

Edward Feldman, being duly sworn, deposes and says: That he is a Special Deputy Superintendent of Banks and Attorney for Liquidations. 962

Your deponent makes this affidavit in order to apprise the Court of additional facts which occurred subsequent to the submission of the affidavits herein, so that the Court may make such disposition thereof as it may deem proper in the premises.

On April 23, 1946, the Alien Property Custodian withdrew and discontinued a claim in the sum of $17,316,806.02 asserted against the Superintendent of Banks as Liquidator of the New York Agency of The Yokohama Specie Bank, Ltd. 963

As a result thereof, the Superintendent of Banks was able to and on the 2nd day of May, 1946 did declare a dividend of 100% of the principal amount of all claims duly accepted or duly allowed in the liquidation of the New York Agency of The Yokohama Specie Bank, Ltd. and did establish a reserve for the amount of all claims in litigation, including the amount set forth in the complaint herein. No interest dividend in the liquidation of the New York Agency of The Yoko-

964 *Opinion.*

hama Specie Bank as yet has been declared by the Superintendent of Banks.

EDWARD FELDMAN

(Sworn to before Richard J. Large June 18, 1946.)

Opinion.

965

SUPREME COURT,
NEW YORK COUNTY,
SPECIAL TERM PART III.

(Mr. Justice BENEDICT D. DINEEN.)
(Reported in 188 Misc. 346, 64 N. Y. S. (2) 804)

Banque Mellie Iran *v.* Yokohama Specie Bank, Lim.—Plaintiff, an Iranian bank, brings this action against a Japanese bank and against the superintendent of banks who is engaged in liquidating the business of the Japanese bank in this
966 state. Plaintiff remitted various sums of money aggregating $116,162.27 to several branches of defendant bank located in different cities in Japan for the purpose of opening credits to be used in the purchase and shipment of goods from Japan to plaintiff's customers in Iran. The remittances were made through the New York agency of the Japanese bank in 1941 before the outbreak of war between the United States and Japan. The credits were limited in time and were not used within the time fixed and it is undisputed that the Japanese bank thereupon became obligated to plaintiff to refund the moneys which had been remitted to it.

Recognizing this obligation, the Japanese bank instructed its New York agency to make the refunds (except as to items aggregating $3,956.97) and the agency notified plaintiff that it had been so instructed and would follow the instruction upon receipt of a license from the Federal Reserve Bank which had become necessary by reason of the freezing regulations of the Federal government. Before the license could be procured, war was declared and the superintendent of banks took over the assets of the New York Agency of the bank.

968 The complaint asks judgment against the Japanese bank and the superintendent, as liquidator, for all the moneys originally remitted to Japan, with interest from December 2, 1941 (the date of the advice from the New York Agency that the refund would be made) and also asks judgment that plaintiff's claim be preferred against the assets of the Japanese bank in the State of New York pursuant to section 606 of the Banking Law. Claim for such preference (except as to an item of $3,701) was duly filed with the superintendent and was rejected.

969 The present motion is made by plaintiff for summary judgment against the superintendent and he makes a cross-motion for summary judgment in his favor and in opposition to plaintiff's motion he also asks that all proceedings on plaintiff's part be stayed until normal communication between the United States and Japan has been resumed. The several motions are consolidated and will be disposed of together.

The facts are not in dispute and summary judgment must be granted to one side or the other unless a stay is granted and prevents a judgment in plaintiff's favor to which it might otherwise be entitled.

970 *Opinion.*

The superintendent's application to stay proceedings by plaintiff is based on the ground that if communication with Japan were possible, it might appear that during the period of hostilities between Japan and Iran (of which latter country plaintiff is a national). Japan seized any balances due from the Japanese bank to plaintiff and so any indebtedness due plaintiff may have been discharged by operation of law.

Plaintiff's right to share as a preferred creditor in the assets of the Japanese bank situate in the
971 State of New York became vested on December 8, 1941, when the Superintendent of Banks took over the assets of the bank in this state. War between Iran and Japan was not declared until March 1, 1945. No authority is offered in support of the motion for a stay and it seems plain that even if such a confiscatory decree of the Japanese government were established, it would not be allowed to affect the disposition of the assets of the bank within this state (*Bollack* v. *Societe General, etc., en France*, 263 App. Div., 601). The motion for a stay is accordingly denied.

972 Plaintiff's case is based on the contention that its claim rises out of transactions had by it with the New York agency of the Japanese bank and that its name appears as a creditor upon the books of that agency. These are the grounds of preference prescribed by Section 606 of the Banking Law. The evidence submitted wholly fails to sustain the claim that plaintiff's name appears as a creditor on the books of the agency.

The contention that plaintiff's claim arises out of transactions with the New York agency is disputed on the ground that its transactions with the agency would have given rise to no cause of action

against the agency if it had been a separate entity, since the agency fully performed all its obligations to plaintiff. The test of liability as an independent legal entity is prescribed by an amendment of the Banking Law made by chapter 65 of the Laws of 1946, approved February 28, 1946, but the provision is not retroactive and section 606 of the statute in effect at the time of the transactions here in question contained no such provision.

In the case of Singer *v.* Yokohama Specie Bank (47 N. Y. Supp. 2d 881), the court at Special Term 974
held that the separate entity test was properly applicable under the statute as it then stood and proceeded to show that the New York agency would not have been liable if it had been such separate entity. Summary judgment was accordingly granted in favor of defendant Superintendent of Banks. That judgment was reversed by the Court of Appeals (293 N. Y. 542) which thereby necessarily held either that the facts in that case established a liability on the part of the agency regarded as a separate entity or that the transactions between the plaintiff in that case and the agency were sufficient to bring the case within the statute 975
without regard to the separate entity theory. In any event, the facts in the present case are stronger than in the case cited since in this case the original remittances to Japan were made through the agency while in the Singer case the moneys had been deposited by the plaintiff's assignor with the Japanese bank and the only transaction between the agency and plaintiff's assignor consisted in the giving and receipt of the advice by the agency that it had been instructed to refund the money.

976 *Opinion.*

Adapting the language of the Court of Appeals in the Singer case to the present controversy, my conclusion is that the course of dealing which culminated in the advice to plaintiff by Yokohama Specie's New York agency, given in accord with instructions from its home office in Japan, was a transaction had by a creditor (plaintiff) of a foreign corporation (Yokohama Specie) with its New York agency, within the provisions of section 606, subdivision 4, paragraph (a), of the Banking Law. It follows that plaintiff should have partial sum-
977 mary judgment for $112,205.30 ($116,162.27—$3,956.97) and interest on its first cause of action. Since the amount claimed in the second cause of action is included in the first, the motion for summary judgment on the second cause of action is dismissed.

The third cause of action is for $3,701 for which a good cause of action against the Japanese bank is shown but for which no claim was presented to the superintendent. Hence he is entitled to summary judgment on that cause of action (Banking Law, Section 620, Subdiv. 2). The action will be
978 severed and may be continued as against the defendant bank.

Settle order.

979

Affidavit of No Other Opinion.

STATE OF NEW YORK,)
COUNTY OF NEW YORK,) ss.:

HENRY L. BAYLES, being duly sworn deposes and says: that he is an attorney and counsellor-at-law, associated with Edward Feldman, attorney for the defendant-appellant-respondent herein and is familiar with all proceedings had herein. No opinion was rendered by the lower court other than that printed at page 322 *supra*.

980

HENRY L. BAYLES

Sworn to before me this
12th day of April, 1948.

RICHARD J. LARGE
Notary Public in the State of New York
Residing in Westchester County
Cert. Filed in N. Y. Co. Clk's No. 837
Commission Expires March 30, 1949

981

982

Stipulation Waiving Certification.

It is hereby stipulated that the foregoing consists of a true and correct copy of the notices of appeal, the judgment and order appealed from, and all the papers upon which the court below acted in making the said judgment and order appealed, and the whole thereof now on file in the Office of the Clerk of the County of New York.

Certification thereof pursuant to Section 616 of the Civil Practice Act is hereby waived.

983

Dated, April 12, 1948.

EDWARD FELDMAN,
Attorney for Defendant-Appellant-Respondent.

WINTHROP, STIMSON, PUTNAM & ROBERTS,
Attorneys for Plaintiff-Respondent-Appellant.

984

Stipulation as to Exhibit.

985

SUPREME COURT OF THE STATE OF NEW YORK,

APPELLATE DIVISION—FIRST DEPARTMENT.

BANQUE MELLIE IRAN,
Plaintiff-Respondent-Appellant,
against

THE YOKOHAMA SPECIE BANK, LTD., LEO T. CROWLEY, as Alien Property Custodian,
Defendants,
and

986

ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York,
Defendant-Appellant-Respondent.

It is stipulated by and between the attorneys for the respective parties herein that the application dated January 5, 1942, a [photostatic] copy of which is annexed hereto as Exhibit A, be included in the record on appeal in the above entitled action as Exhibit B-1 annexed to the affidavit of William P. Leary.

987

Dated: New York, N. Y., June 1, 1948.

WINTHROP, STIMSON, PUTNAM & ROBERTS,
Attorneys for Plaintiff-Respondent-Appellant,

EDWARD FELDMAN,
Attorney for Defendant-Appellant-Respondent.

988 *Stipulation as to Exhibit.*

Exhibit A.

Application for a License to engage in a Foreign Exchange Transaction, Transfer of Credit, Payment, Export or Withdrawal from the United States, or the Earmarking, of Gold or Silver Coin or Bullion or Currency,* or the Transfer, Withdrawal or Exportation of, or Dealing in, Evidences of Indebtedness or Evidences of Ownership of Property.

989 To the Secretary of the Treasury
Washington, D. C.

Sir:

I.

In accordance with Executive Order No. 8389 of April 10, 1940, as amended, regulating transactions in foreign exchange, etc., and the Regulations and Rulings issued thereunder, the undersigned hereby applies for a license to execute the transaction described below:

990 A. (1) The name of the applicant is William R. White as Superintendent of Banks of the State of New York;

(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal place of business at: 80 Centre Street, New York, New York;

(3) Applicant is and has been a citizen of ..... since .....;

*All definitions appearing in Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder shall apply to the terms employed herein.

Stipulation as to Exhibit.

(4) The nationality** of the applicant is.....
.....;

(5) Since ..... the applicant has been engaged in the business of .....

B. The applicant desires a license in order to:

(State in detail the nature, purpose, and amount of the transaction, and the name, address, nationality** and extent of interest of every party, including the applicant, involved or interested in the transaction.)

Proceed to liquidate the assets, property, and business in the State of New York of—

Bank of Chosen
Bank of Taiwan, Ltd.
Mitsubishi Bank, Limited
Mitsui Bank, Limited
The Sumitomo Bank, Limited
Yokohama Specie Bank, Limited
Banca Commerciale Italiana
Banco di Napoli
Banco di Roma
Credito Italiano

in accordance with the provisions of the laws of the State of New York and in the course of such liquidation to pay any and all expenses of liquidation; to sell, assign, compromise, collect, or

** In the case of a corporation, partnership, or association, give country in which organized and indicate the approximate percentages of stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of such organization owned or controlled, directly or indirectly, by a blocked country or one or more nationals thereof.

enforce or otherwise dispose of any and all assets of said banks; to compromise claims against them and to pay dividends to their creditors, all in accordance with and subject to the provisions of Article XIII of the Banking Law of the State of New York relating to the liquidation of foreign banking corporations which have been licensed by the Superintendent of Banks and of which he has taken possession; provided that no payment, transfer of credit, or delivery of property pursuant to the license herein applied for shall be
995 made to or for the account of any national of a blocked country otherwise than by payment, transfer or delivery to a blocked account in the name of such national in a domestic bank.

EXPLANATORY NOTE: Prior to the outbreak of war between the United States and Japan and Italy, the six Japanese banks and the four Italian banks listed above were operating Agencies in the City of New York pursuant to licenses granted by the Superintendent of Banks in accordance with Sections 200 and 201 of the New York State Banking Law. Pursuant to the provisions of
996 subdivision 4 of Section 606 of the Banking Law, the Superintendent took possession of the business and property of the six Japanese Agencies on December 8, 1941, and of the four Italian Agencies on December 11, 1941. Pursuant to arrangements heretofore made with the Foreign Property Control Division, the property of all of such Agencies, excepting the Yokohama Specie Bank, Limited, has been removed from the places of business which they occupied prior to December 8 and December 11 respectively and has been placed for purposes of administration in the quarters at 120 Broadway, New York City, for-

merly occupied exclusively by the Agency of the Yokohama Specie Bank, Limited. If the license applied for herein is granted, the liquidation of the affairs of the Agencies will be conducted in accordance with the same statutory provisions which apply to the liquidation of domestic banking institutions. In this connection reference is made to the license heretofore granted to the Superintendent of Banks to liquidate the affairs of the Banco di Napoli Trust Company of New York of which the Superintendent took possession on December 11, 1941.

II.

The applicant represents and warrants that no party other than those mentioned in item B above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein. If there are any exceptions, note them below.

D. The applicant represents and warrants that all the facts herein stated are correct and true and that he does not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein. (Attach hereto schedules of any additional material information.)

E. The applicant represents and warrants that he has complied, and agrees that he will comply, in all respects, with Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder, and with any and all licenses issued to the applicant pursuant thereto, and that, with respect to the transaction here involved, no

1000 *Stipulation as to Exhibit.*

other application of the undersigned for a license has been filed or is pending, except as follows:

WILLIAM R. WHITE
as Superintendent of Banks
of the State of New York,

By JACKSON S. HUTTO
Deputy Superintendent of Banks

1001

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

I, JACKSON S. HUTTO, on oath depose and say that I am the applicant in the above application for license, or the one of the Deputies of WILLIAM R. WHITE, which is the applicant in the above application for a license; and that I am duly authorized to make the foregoing application on behalf of the applicant: that I have personal knowledge of the facts as set forth in said application and know the same to be true and accu-

1002 rate; and that I do not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein.

(signed) JACKSON S. HUTTO.

80 Centre Street,
New York City.

Subscribed and sworn to before me this 5th day of January, 1942.

(signed) CLINTON D. GANSE,
Notary.

(Notarial Seal)

ADDITIONAL PAPERS TO COURT OF APPEALS

Notice of Appeal to the Court of Appeals by Defendant, Superintendent of Banks. 1003

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

BANQUE MELLIE IRAN,
Plaintiff-Respondent,

against

THE YOKOHAMA SPECIE BANK, LTD., LEO T. CROWLEY, as Alien Property Custodian, 1004
Defendants,

and

ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York,
Defendant-Appellant. 1005

Sirs:

PLEASE TAKE NOTICE that the defendant Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York, hereby appeals to the Court of Appeals of the State of New York, from the judgment signed, entered and filed in the office of the Clerk of the County of New York, on the 2d day of July, 1948, and the order of the Appellate Division of the Supreme Court, First Judicial Department, dated the 17th day of June, 1948, and

1006 *Notice of Appeal to the Court of Appeals by Defendant, Superintendent of Banks.*

entered and filed in the office of the Clerk of said Appellate Division on the 24th day of June, 1948, upon which said judgment is based, insofar as the aforesaid judgment and order affirmed that portion of the judgment dated the 1st day of July, 1946, and entered and filed in the office of the Clerk of the County of New York on the 1st day of July, 1946, and the order of the Supreme Court, New York County, dated the 24th day of June, 1946, and entered and filed in the office of the Clerk of
1007 the County of New York on the 26th day of June, 1946, which—

1. Ordered and adjudged that plaintiff have judgment under the first cause of action set forth in the complaint in the sum of $112,205.30 with interest thereon from December 2, 1941, amounting in all to the sum of $143,017.08, against the defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York;

1008

2. Ordered and adjudged that the sum of $112,205.30 with interest from December 2, 1941, amounting in all to the sum of $143,017.08, shall constitute a preferred claim in the liquidation of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York, under the provisions of Section 606, Subdivision 4(a) of the Banking Law of the State of New York;

3. Failed to grant the cross motion of Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York, for

Notice of Appeal to the Court of Appeals by Defendant, Superintendent of Banks.

summary judgment dismissing the entire first cause of action set forth in the complaint.

This appeal is taken as of right on the ground that the judgment and order from which this appeal is taken modified the aforesaid judgment, entered in the office of the Clerk of the County of New York on the 1st day of July, 1946 and the order upon which it was based, by providing that interest on the sum of $112,205.38 should be payable from the 29th day of October, 1942 and, as so modified, affirmed the said judgment and order.

Dated: New York, N. Y., July 16, 1948.

Yours etc.

EDWARD FELDMAN,
Attorney for Defendant-Appellant, Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York,
Office and P. O. Address
80 Spring Street,
Borough of Manhattan,
City of New York.

To:

WINTHROP, STIMSON, PUTNAM & ROBERTS, Esqs.,
Attorneys for Plaintiff-Respondent,
Office and P. O. Address,
32 Liberty Street,
Borough of Manhattan,
City of New York.

ARCHIBALD R. WATSON, Esq.,
Clerk of the County of New York.

1012 **Notice of Appeal to Court of Appeals by Plaintiff.**

SUPREME COURT OF THE STATE OF NEW YORK.

COUNTY OF NEW YORK.

BANQUE MELLIE IRAN,
Plaintiff-Respondent,

against

1013 THE YOKOHAMA SPECIE BANK, LTD., LEO T. CROWLEY, as Alien Property Custodian,
Defendants,

and

ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York,
Defendant-Appellant.

1014 *Sir:*

PLEASE TAKE NOTICE that the plaintiff, Banque Mellie Iran, hereby appeals to the Court of Appeals of the State of New York from the judgment entered herein in the office of the Clerk of the County of New York on the 2nd day of July, 1948, and from the order of the Appellate Division of the Supreme Court, First Department, entered herein in the office of the Clerk of said Appellate Division on the 24th day of June, 1948, upon which order the judgment aforesaid is based, in so far as

the said judgment and order affirmed that portion of the judgment entered herein in the office of the Clerk of the County of New York on the 1st day of July, 1946 and affirmed the order of the Supreme Court, New York County, entered herein in the office of the Clerk of the County of New York on the 26th day of June, 1946, which ordered and adjudged that the cross motion of the defendant Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York, be granted to the extent of dismissing the sum of $225.97 contained in the First Cause of Action set forth in the complaint and dismissing the Third Cause of Action in the sum of $3,701., and in so far as the aforesaid order of the Appellate Division and the aforesaid judgment entered in the office of the Clerk of the County of New York on July 2, 1948 directed the modification of the aforesaid order entered in the office of the Clerk of the County of New York on June 26, 1946, and the aforesaid judgment entered in the office of the Clerk of the County of New York on the 1st day of July, 1946, so that interest on the amount of said judgment shall be payable from the 29th day of October, 1942. 1016 1017

This appeal is taken as of right on the ground that the judgment and order from which the appeal is taken modified the judgment entered in the office of the Clerk of the County of New York on the 1st day of July, 1946, and the order upon which it was based, by providing that interest on the sum of $112,205.38 should be payable from

Notice of Appeal to Court of Appeals by Plaintiff.

the 29th day of October, 1942, and as so modified affirmed the said judgment and order.

Dated: New York, July 30, 1948

Yours, &c.

WINTHROP, STIMSON, PUTMAN & ROBERTS
Attorneys for Plaintiff-Respondent,
Banque Mellie Iran
Office and Post Office Address
No. 32 Liberty Street
Borough of Manhattan
City of New York

To:

EDWARD FELDMAN, Esq.
Attorney for Defendant-Appellant
Elliott V. Bell, Superintendent of
Banks of the State of New York as
liquidator of Yokohama Specie
Bank, Ltd. in the State of New
York
80 Spring Street
New York City

ARCHIBALD R. WATSON, Esq.
Clerk of the County of New York

Judgment of Modification and Affirmance Appealed From.

1021

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

BANQUE MEILLIE IRAN,
Plaintiff,

against

1022

THE YOKOHAMA SPECIE BANK, LTD., ELLIOTT V. BELL, Superintendent of Banks of the State of New York, as Liquidator of the Business and Property of The Yokohama Specie Bank, Ltd., in the State of New York, and LEO T. CROWLEY, as Alien Property Custodian,

Defendants.

1023

A judgment in the above entitled action in favor of plaintiff and against the defendant, Elliott V. Bell, as Superintendent of Banks of the State of New York, as Liquidator of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York, having been entered herein in the office of the Clerk of the County of New York on the first day of July, 1946, which adjudged that plaintiff recover of said defendant the sum of $112,205.30, with interest thereon from the second day of December, 1941, amounting in all to the sum of $143,017.08, and further adjudg-

ed that said sum shall constitute a preferred claim under Section 606, subdivision 4(a), of the Banking Law of the State of New York, in the liquidation of said The Yokohama Specie Bank, Ltd., payable as such out of the assets of The Yokohama Specie Bank, Ltd., in the possession of said defendant, such payment, however, to be subject to the provisions of Executive Order of the President of the United States No. 8389, as amended, and which further adjudged that the sum of $255.97
1025 contained in the first cause of action set forth in the complaint herein be dismissed and that the third cause of action in said complaint be dismissed, and said defendant having appealed to the Appellate Division of the Supreme Court, First Department, from said judgment and from the order dated June 24, 1946, directing the entry of said judgment, and the plaintiff having appealed from so much of said judgment which adjudged that the sum of $255.97 contained in the first cause of action set forth in the complaint herein be dismissed and that the third cause of action in said
1026 complaint be dismissed, and from so much of said order which ordered that the cross-motion of defendant for summary judgment dismissing the complaint of the plaintiff be granted to the extent of dismissing the sum of $255.97 contained in the first cause of action set forth in the complaint and dismissing the third cause of action in the sum of $3,701, and said order and judgment having been modified by said Appellate Division on the 17th day of June, 1948, by providing that interest is to be payable on the sum of $112,205.30 from October 29, 1942, and, as so modified, affirmed by said Appellate Division, and a certified copy of the order and judgment of modification and affirmance

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having been filed in the office of the Clerk of the County of New York on the 26th day of June, 1948.

Now, on motion of Winthrop, Stimson, Putnam & Roberts, attorneys for plaintiff, it is

ADJUDGED, that the judgment entered herein on the first day of July, 1946, in the sum of $112,205.38, with interest from the second day of December, 1941, be modified so that interest on said sum shall be payable from the 29th day of October, 1942, and, as so modified, affirmed.

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Judgment signed and entered this 2nd day of July, 1948.

ARCHIBALD R. WATSON,
Clerk.

1029

1030 **Order of Modification and Affirmance Appealed From.**

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 17th day of June, 1948.

Present:

Hon. David W. Peck,
Presiding Justice,
" Edward J. Glennon,
1031 " Edward S. Dore,
" Albert Cohn,
" John Van Voorhis,
Justices.

Banque Mellie Iran,
Plaintiff-Respondent-Appellant,

against

The Yokohama Specie Bank, Ltd., Leo T. Crowley, as Alien Property Custodian,
Defendants,

1032 *and*

Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York,
Defendant-Appellant-Respondent.

An appeal having been taken to this Court by the defendant Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama

Order of Modification and Affirmance Appealed From.

Specie Bank, Ltd. in the State of New York, from that part of an order of the Supreme Court, New York County, entered on the 26th day of June, 1946, and from that part of the judgment entered thereon in the Office of the Clerk of the County of New York on the 1st day of July, 1946, which:

1. Ordered and adjudged that plaintiff have judgment under the first cause of action set forth in the complaint in the sum of $112,205.30 with interest thereon from December 2, 1941, amounting in all to the sum of $143,017.08, against the defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York;

2. Ordered and adjudged that the sum of $112,205.30 with interest from December 2, 1941, amounting in all to the sum of $143,017.08, shall constitute a preferred claim in the liquidation of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York, under the provisions of Section 606, Subdivision 4(a) of the Banking Law of the State of New York;

3. Failed to grant the cross motion of Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York, for summary judgment dismissing the entire first cause of action set forth in the complaint; and the defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property

1036 *Order of Modification and Affirmance Appealed From.*

of The Yokohama Specie Bank, Ltd. in the State of New York, having brought up for review the order of the Supreme Court, New York County, entered on the 26th day of June, 1946, denying his application for a stay of proceedings, which review was withdrawn by said Superintendent of Banks; and

An appeal having been taken by the plaintiff from so much of said order of the Supreme Court, New York County, entered on the 26th day of
1037 June, 1946, which ordered that the cross motion of the defendant Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd. in the State of New York, for summary judgment dismissing the complaint of the plaintiff as against the said defendant be granted to the extent of dismissing the sum of $255.97 contained in the first cause of action set forth in the complaint and dismissing the third cause of action in the sum of $3,701.00 and from so much of the judgment entered thereon in the
1038 office of the Clerk of the County of New York on the 1st day of July, 1946, which adjudged that the sum of $253.97 contained in the first cause of action set forth in the complaint be dismissed and that the third cause of action in said complaint be dismissed; and said appeal having been argued by Mr. Edward Feldman, counsel for the defendant-appellant-respondent, and by Mr. Allen T. Klots, of counsel for the plaintiff-respondent-appellant; and due deliberation having been had thereon and the memorandum decision of this Court having been filed, it is unanimously

Order of Modification and Affirmance Appealed From.

1039

ORDERED AND ADJUDGED that the judgment and order so appealed from, granting in part and denying in part plaintiff's motion for summary judgment and granting in part the cross motion of defendant Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York, for summary judgment be and the same hereby are modified on the law by providing that interest is to be payable on the sum of $112,205.30 from October 29, 1942 and, as so modified affirmed, without costs.

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Enter

A. C.

1041

1042 **Affidavit of No Opinion by Appellate Division.**

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

HENRY L. BAYLES, being duly sworn, deposes and says: That he is an attorney and counselor-at-law, associated with EDWARD FELDMAN, attorney for the defendant-appellant-respondent herein, and is familiar with all prior proceedings had herein. That no opinion was rendered by the
1043 Appellate Division, First Department in modifying and affirming as modified, the judgment and order appealed from.

HENRY L. BAYLES.

Sworn to before me this
29 day of October, 1948.

RICHARD J. LARGE,
Notary Public in the State of New York,
Residing in Westchester County,
Cert. Filed in N. Y. Co. Clk's No. 837,
1044 Commission Expires March 30, 1949.

Stipulation Waiving Certification. 1045

It is hereby stipulated that the foregoing consist of true and correct copies of the notices of appeal to the Court of Appeals, the judgment and order of the Appellate Division appealed from, and all the papers upon which the Court below acted in making the order and judgment appealed from, and the whole thereof now on file in the office of the Clerk of the County of New York, and certification thereof by said clerk is hereby waived.

Dated: October 29, 1948. 1046

WINTHROP, STIMSON, PUTNAM & ROBERTS,
Attorneys for Plaintiff-Respondent-Appellant.

EDWARD FELDMAN,
Attorney for Defendant-Appellant-Respondent.

1047

[fol. 350] STATE OF NEW YORK,
Court of Appeals,
State Reporter's Office, ss:

I, Leland F. Coss, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Banque Mellie Iran v. Yokohama Specie Bank decided by the Court of Appeals on the 14th day of April, 1949, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 14th day of June, 1949.

Leland F. Coss, as Reporter of the Court of Appeals of the State of New York. (Seal.)

Attest: L. S. John Ludden, Clerk of the Court of Appeals.

STATE OF NEW YORK,
Court of Appeals:

I, John T. Loughran, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that John Ludden is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that Leland F. Coss is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Banque Mellie Iran v. Yokohama Specie Bank decided by the said Court of Appeals on the 14th day of April, 1949, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of John Ludden, as clerk of said court, appended thereto is the true and genuine signature of said John Ludden, and the

signature of Leland F. Coss, as reporter of said court, appended thereto is the true and genuine signature of said Leland F. Coss.

In witness whereof, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York on the sixteenth day of June in the year one thousand nine hundred and forty-nine.

John T. Loughran, as Chief Judge of the Court of Appeals of the State of New York.

[fol. 351] BANQUE MELLIE IRAN, Appellant and Respondent,

v.

YOKOHAMA SPECIE BANK, LTD., et al., Defendants, and Elliott V. Bell, Superintendent of Banks of the State of New York, as Liquidator of Yokohama Specie Bank, Ltd., in the State of New York, Respondent and Appellant

Decided April 14, 1949

FULD, J.:

Disposition of this appeal is controlled by our two decisions in *Singer* v. *Yokohama Specie Bank*, the one decided today (299 N. Y. 113), the other in 1944 (293 N. Y. 542).

The facts are undisputed. During the first half of 1941, plaintiff, the Central Bank of Iran, seeking to create credits in favor of certain exporters in Japan, ordered a New York City bank, the Irving Trust Company, to pay to the New York Agency of Yokohama Specie Bank, Ltd., various sums of money, totaling $117,162.27. These funds were transmitted by the Agency to Japanese branches of Yokohama Specie Bank, Ltd., and stood to the credit of plaintiff's Japanese shippers. The credits were to expire on a date fixed, with the proviso that the unused balances were to be returned to plaintiff.

The onset of freezing controls in July, 1941, found the original totals intact, except for a single withdrawal of $1,000 and, when the credits expired shortly thereafter, a [fol. 352] balance of $116,162.27 remained for refund to plaintiff. On December 2, 1941, a few days before Pearl Harbor, the home office of the Yokohama Specie Bank, Ltd.,

notified its New York Agency of the amount of the unutilized credits and, except as to items totaling $3,956.97, directed it to refund that amount to plaintiff. Since compliance with those directions would have involved a transfer of funds which were subject to Federal freezing controls, the New York Agency, in advising the Irving Trust Company of its instructions from the home office, declared that it would hold the funds pending receipt of a Federal Treasury license clearing payment. Before such a license was procured, war broke out and the Superintendent of Banks took over the assets of the New York Agency, as liquidator. In that capacity, he rejected plaintiff's claim as a preferred creditor of the New York Agency.

In the present action against Yokohama Specie Bank, Ltd., and the Superintendent, as its liquidator, plaintiff sues for $116,162.27, the alleged balance of the moneys originally remitted to Japan, with interest from December 2, 1941, the date of the letter by which the New York Agency advised that it was in funds belonging to plaintiff. The complaint contains three causes of action. The first seeks recovery of specified sums which total $112,461.27, and the third involves an item of $3,701; the second cause of action may be disregarded, since the amount therein sought is included in the first cause of action.

The court at Special Term, concluding that plaintiff's proof established "a preferred claim under Section 606, subdivision 4(a), of the Banking Law", awarded plaintiff partial summary judgment for $112,205.30—the amount in the first cause of action less an item of $255.97—with interest on that amount from December 2, 1941. It was explicitly adjudged, however, that payment of that claim was "subject to the provisions of Executive Order of the President of the United States No. 8389 as amended". As to the remaining causes of action and the balance of the money sued for, the court granted the Superintendent's cross motion for summary judgment. Both parties appealed to the Appellate Division, which modified the judgment by providing that interest should run from October 29, 1942, rather than from December 2, 1941, and now both parties appeal to us from that determination.

Our decision on the first *Singer* appeal (293 N. Y. 542, *supra*) dictated both the recognition of plaintiff's claim as a preferred one under the Banking Law and the direction that its principal amount be paid on condition that a

license authorizing such payment be obtained from the Federal Government. The amount of $112,205.30 awarded represented the aggregate of the sums which the New York Agency, in its letter of December 2, 1941, acknowledged were due to plaintiff upon its obtaining Treasury authorization. Underlying plaintiff's claim for that amount was a course of dealings which culminated in the advice by the [fol. 353] Agency that it was in funds which it was obligated to pay to plaintiff. These dealings constituted, to use the language of our decision in the earlier *Singer* appeal (293 N. Y., *supra*, at p. 550), "a transaction had by a creditor", plaintiff Banque Mellie, "of a foreign corporation", Yokohama Specie Bank, Ltd., " 'with its New York agency,' " and, *pro tanto*, entitled plaintiff to a preference under subdivision 4 of section 606 of the Banking Law.

The same cannot, however, be said of the remaining items, aggregating $3,956.97, which were not mentioned in the Agency's letter to Irving Trust Company. There is entirely lacking, as to those sums, the essential acknowledgment by the New York Agency that it was under any obligation to pay plaintiff. It follows that plaintiff's claim to those items does not "arise out of a transaction" with the Agency and is not entitled to recognition as a preferred claim.

Of course, even the amount to which plaintiff has established an accrued claim is not yet ripe for payment. Recognize plaintiff's claim we may, but its payment must await authorization by the Treasury Department in accordance with Executive Order No. 8389 (Code of Fed. Reg., Cum. Supp. tit. 3, p. 645). As we held in the *Singer* appeal (*supra*), none of the documents relied upon by plaintiff may be accorded that effect. The result is that, in this case, just as in the *Singer* case, plaintiff may not, until it produces the necessary Federal clearance, collect the principal of its claim.

From this conclusion it flows as an inevitable corollary that plaintiff's claim for interest must fail. In the absence of Treasury authorization, the Superintendent was under no obligation, certainly under no absolute or unconditional obligation, to pay the principal of plaintiff's claim. A settled principle of law prohibits the running of interest upon such an obligation. Indeed, for more than half a century this court has viewed as self-evident the proposition that interest does not accumulate upon an obligation to pay unless it is unconditional. (See, e.g., *Moscow Fire Ins. Co. v. Heckscher*

& Gottlieb, 285 N. Y. 674, affg. 260 App. Div. 646, 650; *Donnelly* v. *City of Brooklyn*, 121 N. Y. 9, 19-20; *McCloskey* v. *Brown*, 271 App. Div. 772.) "It is obvious", we declared in 1890, "that if the duty to pay has not become absolute, the liability for interest does not arise". (*Donnelly* v. *City of Brooklyn*, *supra*, 121 N. Y. at p. 20.) That precisely describes the situation before us, for payment of plaintiff's claim has expressly been made conditional upon Treasury authorization, "subject to the provisions of Executive Order • • • No. 8389". That being so, liability for interest does not arise.

The judgments should be modified, by eliminating the provisions adjudging that plaintiff is entitled to interest upon his claim and, as so modified, affirmed, without costs.

Loughran, Ch. J., Lewis, Conway, Desmond and Dye, JJ., concur.

Judgment accordingly.

[fol. 354] COURT OF APPEALS

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 14th day of April in the year of our Lord one thousand nine hundred and forty-nine, before the Judges of said Court.

Witness, the Hon. John T. Loughran, Chief Judge Presiding. John Ludden, Clerk.

REMITTUR—April 15, 1949

BANQUE MELLIE IRAN, Respondent-Appellant

vs.

THE YOKOHAMA SPECIE BANK LTD., & ano., &c., Defendants, and Elliott V. Bell, as Superintendent of Banks of the State of New York, &c., Appellant-Respondent

Be it remembered, that on the 3rd day of November in the year of our Lord one thousand nine hundred and forty-eight, Elliott V. Bell, as Superintendent of Banks of the State of New York, &c., the appellant-respondent in this cause came here unto the Court of Appeals, by Edward Feld-

man, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department, and Banque Mellie Iran, the respondent-appellant in said cause, afterwards appeared in said [fol. 355] Court of Appeals by Winthrop, Stimson, Putnam & Roberts, its attorneys, and also filed a notice of appeal.

Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this cause submitted by counsel for the appellant-respondent and argued by Mr. Allen T. Klots, of counsel for the respondent-appellant, and by Mr. James L. Morrison, for amicus curiae, and after due deliberation had thereon, did order and adjudge that the judgments herein be and the same hereby are modified in accordance with the opinion herein, and, as so modified, affirmed without costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgments be modified &c., as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

[fol. 356] Court of Appeals, Clerk's Office

Albany, April 15, 1949.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal.)

[fol. 357] In Court of Appeals, State of New York

At a Court of Appeals for the State of New York held at Court of Appeals Hall in the City of Albany, on the nineteenth day of July, A.D. 1949.

Present: Hon. John T. Loughran, Chief Judge, Presiding.

Banque Mellie Iran, Plaintiff-Respondent-Appellant,

vs.

The Yokohama Specie Bank, Ltd., Leo T. Crowley, as Alien Property Custodian, Defendant,

and

Elliott V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York, Defendant-Appellant-Respondent

A motion to amend the remittitur having heretofore been made herein upon the part of the defendant-appellant-respondent, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted and the remittitur amended to the following extent:

A federal question was presented and necessarily passed upon by this Court, viz: it was held that the provisions of Executive Order No. 8389, as amended, and the rules and regulations issued pursuant thereto did not prevent the accrual or creation of the claim sued upon or render such claim void, but merely prevented the payment of the claim until an appropriate federal license is obtained, and that the documents in evidence do not constitute such a license.

And, the Supreme Court, County of New York, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

Date: Oct. 21, 1949.

No fee for official use.

I hereby certify that the foregoing paper is a true copy of the original thereof, filed in my office on the 19 day of July, 1949. A copy.

Raymond J. Cannon, Deputy Clerk. (Seal.)

Archibald R. Watson, County Clerk and Clerk of the Supreme Court New York County.

Facsimile signature used pursuant to Chapter 684, Laws of 1947.

Compared by BBA, N. Y. County Clerk's Office.

[fol. 359] Copy

In Court of Appeals, State of New York

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany, on the sixth day of October, A. D. 1949.

Present, Hon. John T. Loughran, Chief Judge, Presiding.

Banque Mellie Iran, Plaintiff-Respondent-Appellant,

vs.

The Yokohama Specie Bank, Ltd., Leo T. Crowley, as Alien Property Custodian, Defendant,

and

Elliot V. Bell, as Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York, Defendant-Appellant-Respondent

Eugene T. Singer, Plaintiff-Respondent-Appellant,

vs.

Yokohama Specie Bank, Ltd., Defendant,

and

Elliot V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property in the State of New York, of the Yokohama Specie Bank, Ltd., Defendant-Appellant-Respondent

Motions for re-argument of the above causes having been heretofore made upon the part of the defendant-appellant-respondent herein and papers having been duly submitted thereon and due deliberation thereupon had, it is

Ordered, that the said motions be and the same hereby are denied with ten dollars costs and necessary printing disbursements.

A copy

(Signed) Raymond J. Cannon, Deputy Clerk. (Seal.)

[fol. 360] SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK

BANQUE MELLIE IRAN, Plaintiff,

against

THE YOKOHAMA SPECIE BANK, LTD., LEO T. CROWLEY, as Alien Property Custodian, Defendants,

and

ELLIOT V. BELL, as Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York, Defendant

Judgment on Remittitur of Court of Appeals

The above named defendant, Elliott V. Bell, Superintendent of Banks of the State of New York, as liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York, having appealed to the Court of Appeals of the State of New York from the judgment of modification and affirmance of this Court entered upon the order of the Appellate Division of the Supreme Court, First Department, in the office of the Clerk of the County of New York, on the 2nd day of July, 1948 in so far as the aforesaid judgment and order affirmed that portion of the judgment heretofore entered herein in the office of said clerk on the 1st day of July, 1946, which

1. Ordered and adjudged that plaintiff have judgment under the first cause of action set forth in the complaint in the sum of $112,205.30 with interest thereon from December 2, 1941 against the aforesaid defendant;

2. Ordered and adjudged that the sum of $112,205.30 with interest from December 2, 1941 shall constitute a preferred [fol. 361] claim in the liquidation of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York under the provisions of Section 606 Subdivision 4(a) of the Banking Law of the State of New York;

3. Failed to grant the cross-motion of the aforesaid defendant for summary judgment dismissing the first cause of action set forth in the complaint; and

The above named plaintiff having appealed to the Court of Appeals of the State of New York from the judgment of modification and affirmance of this Court entered upon the order of the Appellate Division of the Supreme Court, First Department, in the Office of the Clerk of the County of New York on the 2nd day of July, 1948, in so far as the said judgment and order affirmed that portion of the judgment entered herein in the Office of the Clerk of the County of New York on the 1st day of July, 1946 which ordered and adjudged that the cross-motion of the defendant, Elliott V. Bell, be granted to the extent of dismissing the sum of $225.97 contained in the first cause of action set forth in the complaint and dismissing the third cause of action in the sum of $3,701.00 and in so far as the aforesaid judgment entered in the Office of the Clerk of the County of New York on July 2, 1948 directed the modification of the aforesaid judgment entered in the Office of the Clerk of the County of New York on the 1st day of July, 1946 so that interest on the amount of said judgment should be payable from the 29th day of October, 1942; and

The said appeals having been duly argued at the said Court of Appeals and after due deliberation the Court of Appeals having ordered and adjudged that the said judgment so appealed from as aforesaid be modified by eliminating the provisions adjudging that plaintiff is entitled to interest upon its claim in accordance with the opinion of the Court of Appeals herein and as so modified affirmed and [fol. 362] having further ordered and adjudged that the proceedings herein be remitted to this Supreme Court there to be proceeded upon according to law; and the remittitur from the said Court of Appeals having been filed herein and the order having been entered herein making the order and the judgment of the said Court of Appeals the order and judgment of this Court;

Now, on motion of Winthrop, Stimson, Putnam & Roberts, attorneys for the plaintiff herein, it is hereby

Ordered and Adjudged that the order and judgment of the said Court of Appeals be and the same hereby are made the order and judgment of this Court; and it is further

Ordered and Adjudged that the said judgment entered herein on the 2nd day of July, 1948 be and the same hereby is modified by eliminating the provisions adjudging the plain-

tiff is entitled to interest upon his claim and as so modified affirmed without costs.

Judgment signed and entered this 29th day of April, 1949.

(Sgd.) Archibald R. Watson, Clerk.

Date: Oct. 21, 1949.

I hereby certify that the foregoing paper is a true copy of the original thereof, filed in my office on the 29 day of Apr., 1949.

Archibald R. Watson, County Clerk and Clerk of the Supreme Court New York County.

Facsimile signature used pursuant to Chapter 684, Laws of 1947.

No Fee for Official Use.

Compared by BBA, N. Y. County Clerk's Office.

[fol. 363] [Endorsed:] Index No. 18594. Year 1943. Supreme Court, New York County. Banque Mellie Iran, Plaintiff, against The Yokohama Specie Bank, Ltd., et al. Judgment on Remittitur of Court of Appeals. Edward Feldman, Attorney for Defendant. Office and Post Office Address 80 Spring Street, Borough of Manhattan, City of New York 12, CAnal 6-1600.

[fol. 364] Supreme Court of the United States, October Term, 1949

No. 513

Order Allowing Certiorari—Filed February 20, 1950

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

[fol. 365] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 528

ORDER ALLOWING CERTIORARI—Filed February 20, 1950

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.